

1937 SUPPLEMENT
TO THE
NORTH CAROLINA CODE OF 1935
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1937 Supplement
TO THE
NORTH CAROLINA CODE
of 1935

Containing All the General Laws of
the 1936 Extra Session and the
1937 Regular Session of the Legislature

COMPLETE ANNOTATIONS

UNDER THE EDITORIAL SUPERVISION OF

A. HEWSON MICHIE

BEIRNE STEDMAN

AND

CHAS. W. SUBLETT

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.

1937

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BY

THE MICHIE COMPANY

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Preface

This complete supplement to Michie's North Carolina Code of 1935 contains all of the general laws enacted at the 1936 extra session, and the 1937 regular session of the Legislature, and full and comprehensive annotations beginning where the 1935 Code left off and continuing until the date of publication. Amendments of former laws are inserted under the same section numbers appearing in the 1935 Code. New laws appear under the proper chapter headings. The same standard of skillful editorial work which contributed to the popularity of the 1935 Code is maintained throughout this volume. Special attention is directed to the editors' notes pointing out the changes effected by the Laws of 1936 and 1937. It is believed that these notes will prove invaluable and will save the lawyer from laborious comparisons.

The index is confined to references to new laws enacted by the Legislature in its extra session of 1936, and its regular session of 1937.

1937 Supplement to the North Carolina Code of 1935

CHAPTER 1 ADMINISTRATION

Art. 1. Probate Jurisdiction

§ 1. Clerk of superior court has probate jurisdiction.

Collateral Attack.—

A clerk has jurisdiction to appoint an administrator where the affidavit of the applicant presumes the death of the decedent from his absence of seven years and the lack of communication from him. The order and appointment can only be avoided by showing the person not to be in fact dead. *Chamblee v. Security Nat. Bank*, 211 N. C. 48, 188 S. E. 632. See § 28.

Art. 3. Right to Administer

§ 6. Order in which persons entitled.

Right to Renounce and Nominate Another for Appointment Is Recognized.—There is no express provision requiring the clerk to recognize the right of one belonging to a preferred class to renounce his right to qualify and at the same time nominate another for appointment in his stead, but this construction has been uniformly applied by the courts and has become firmly embedded in the law of administration in North Carolina. In *re Estate of Smith*, 210 N. C. 622, 188 S. E. 202. See *Ritchie v. McAuslin*, 2 N. C. 220; *Carthey v. Webb*, 6 N. C. 268; *Smith v. Munroe*, 23 N. C. 345; *Pearce v. Castrix*, 53 N. C. 71; *Wallis v. Wallis*, 60 N. C. 78; *Hughes v. Pipkin*, 61 N. C. 4; *Little v. Berry*, 94 N. C. 433; *Williams v. Neville*, 108 N. C. 559, 13 S. E. 240; In *re Meyers*, 113 N. C. 545, 18 S. E. 689; *Boynton v. Heardt*, 158 N. C. 488, 74 S. E. 470, Ann. Cas. 1913D, 616; In *re Estate of Jones*, 177 N. C. 337, 98 S. E. 827.

Nominee of Next of Kin.—The nominee of deceased's nearest of kin will be appointed administrator, if a fit and suitable person, as against those of lesser degree of kinship, provided that no person of the same class as the next of kin renouncing the right files a personal application for appointment. In *re Estate of Smith*, 210 N. C. 622, 188 S. E. 202.

§ 15. Failure to apply as renunciation.

See the note to § 20 in this Supplement.

§ 16. Person named as executor failing to qualify or renounce.

See the note to § 20 in this Supplement.

Art. 4. Public Administrator

§ 20. When to obtain letters.

Six Months Is Reasonable Time to Apply for Appointment of Administrator.—Construing this section and §§ 16 and 15, together, the legislative intent is manifest that six months after the death of testator is a reasonable time within which application should be made, in proper instances, for appointment of administrator c. t. a. In *re Estate of Smith*, 210 N. C. 622, 188 S. E. 202.

Art. 5. Administrator with Will Annexed

§ 22. When letters c. t. a. issue.

Waiver of Right to Appointment.—Where a legatee entitled to preferential appointment as administrator c. t. a., fails to object to the appointment of an administrator c. t. a., but waits until after the death of the administrator appointed more than a year after testator's death before asserting his right and renouncing in favor of a third person, the legatee has waived his right, and his nominee is not entitled to appointment as against the nominee of the surviving sisters of testator. In *re Estate of Smith*, 210 N. C. 622, 188 S. E. 202.

And Right of Nomination and Substitution.—The right of nomination and substitution is confined to those themselves qualified for appointment, and where a legatee has waived his right to be appointed administrator c. t. a. by failing to apply within a reasonable time, he also waives his right of nomination and substitution. In *re Estate of*

Smith, 210 N. C. 622, 188 S. E. 202. See § 6 and the note thereto.

Art. 7. Appointment and Revocation

§ 28. Facts to be shown on applying for administration.

Appointment Based on Legal Presumption of Death.—Upon an affidavit showing that a person had been absent for over seven years and had not been heard from by relatives or friends, the fact that at the time of the appointment it was contemplated that an action should be brought to determine any question that might arise contrary to the legal presumption of death does not invalidate the appointment or nullify the proof afforded by the jurisdictional affidavit. *Chamblee v. Security Nat. Bank*, 211 N. C. 48, 188 S. E. 632. See § 1.

Art. 8. Bonds

§ 33. Bond; approval; condition; penalty.

Cited in *Hicks v. Purvis*, 208 N. C. 657, 182 S. E. 151.

Art. 9. Notice to Creditors

§ 45. Advertisement for claims.

Cited, in *Park View Hospital Ass'n v. Peoples Bank, etc., Co.*, 211 N. C. 244, 189 S. E. 766.

Art. 11. Assets

§ 65(a). Payment to clerk of sums not exceeding \$300 due and owing intestates.—Where any person dies intestate and at the time of his or her death there is a sum of money owing to the said intestate not in excess of three hundred dollars, such sum may be paid into the hands of the clerk of the superior court, whose receipt for same shall be a full and complete release and discharge for such debt or debts, and the said clerk of the superior court is authorized and empowered to pay out such sum or sums in the following manner: First, for satisfaction of widow's year's allowance, after same has been assigned in accordance with law, if such be claimed; second, for payment of funeral expenses, and if there be any surplus the same to be disposed of as is now provided by law. This section shall apply to the counties of Guilford, Edgecombe, Randolph, Cabarrus, Iredell, Moore, Anson, Watuga, Wilson, Craven, Cumberland, Johnston, Rutherford, Stanly, Davidson, Currituck, Yadkin, Alexander, Stokes, Clay, Greene, Wayne, Franklin, Macon, Beaufort, Swain, Haywood, Caldwell, Burke, Gates, Rockingham, Graham, Person, Catawba, Dare, Tyrrell, Perquimans, Transylvania, Duplin, Hyde, Pender, Surry, Alamance, Lincoln, Granville, Chowan, Hoke, Lee, Vance, Robeson, Orange, Davidson, Montgomery, Durham, Wake, Mecklenburg, Harnett, Buncombe, Union, Onslow, Nash, Halifax, Hertford, Pasquotank, McDowell, Rowan, New Hanover, Warren and Martin. (1921, c. 93; Ex. Sess. 1921, c. 65; 1924, cc. 15, 58; 1927, c. 7; 1929, cc. 63, 71, 121; 1931, c. 21; 1933, cc. 16, 49; 1935, cc. 69, 96, 367; 1937, cc. 13, 55, 121, 336, 377.)

Editor's Note.—The amendments of 1937 made this section applicable to Buncombe, New Hanover, Warren, McDowell and Surry counties. Public Laws 1937, c. 336, struck out Forsyth county and enacted special provisions applicable thereto.

Art. 11A. Discovery of Assets

§ 65(b). Examination of persons or corporations believed to have possession of property of dece-

dent. — Whenever an executor or administrator makes oath before the clerk of the superior court of the county where the party to be examined resides or does business that he has reasonable ground to believe, setting forth the grounds of his belief, that any person, firm or corporation has in his or its possession any property of any kind belonging to the estate of his decedent, said clerk shall issue a notice to said person or the member of the firm or officer, agent or employee of the firm or corporation designated in the affidavit, to appear before said clerk at his office at a time fixed in said notice, not less than three days after the issuance of said notice, and be examined under oath by said executor or administrator or his attorney concerning the possession of said property. If upon such examination the person examined admits that he or the firm or corporation for which he works has in his or its possession any property belonging solely to the decedent, and fails to show any satisfactory reason for retaining possession of said property, the clerk of the superior court shall issue an order requiring said person, firm or corporation forthwith to deliver said property to said executor or administrator, and may enforce compliance with said order by an attachment for contempt of court, and commit said person to jail until he shall deliver said property to said executor or administrator: Provided, that in the case of a firm or corporation, whenever any person other than a partner or executive officer of such firm or corporation is examined, no such order shall be made until at least three days after service of notice upon a partner or executive officer of such firm or corporation to show cause why such order should not be made. (1937, c. 209, s. 1.)

Editor's Note.—The purpose of this section is to expedite the settlement of a decedent's estate by permitting the representative to discover assets of the estate through and upon the authority of the probate court without having to resort, independently, to the rather slow and expensive proceeding of claim and delivery. However, since the section seems to provide only for the situation where a party "admits" that the property held belongs to the decedent's estate and refuses for an inadequate reason to give it up, it would seem that the representative would still have to utilize claim and delivery proceedings in the case where the party in possession of the property denies that it belongs to the estate of the deceased. It is doubtful that the section would, by inference, authorize the clerk to try the title to such property. 15 N. C. Law Rev., No. 4, p. 352.

§ 65(c). Right of appeal.—Any person aggrieved by the order of the clerk of the superior court may, within five days, appeal to the judge holding the next term of the superior court of the county after said order is made or to the resident judge of the district, but as a condition precedent to his appeal he shall give a justified bond in a sum at least double the value of the property in question, conditioned upon the safe delivery of the property and the payment of damages for its detention, to the executor or administrator in the event that the order of the clerk should be finally sustained. When said bond is executed and delivered to the court no attachment shall be served upon the appealing party, or, if he has already been committed, he shall be released pending the final determination of the appeal. If the appellant fails to have his appeal heard at the next term of the superior court held in his county, or by the resident judge of the district, within thirty days after giving notice of appeal, the clerk of the court may

recommit the appellant to jail until he shall deliver the property to the executor or administrator as aforesaid. (1937, c. 209, s. 2.)

§ 65(d). Costs.—The party against whom the final judgment is rendered shall be adjudged to pay the costs of the proceedings hereunder. (1937, c. 209, s. 3.)

§ 65(e). Remedies supplemental.—The remedies provided in this article shall not be exclusive, but shall be in addition to any remedies which are now or may hereafter be provided. (1937, c. 209, s. 4.)

Art. 13. Sales of Real Property

§ 74. Sales of realty ordered, if personalty insufficient for debts.—

Proceedings for the sale of the real estate of a decedent brought by his personal representative to create assets with which to pay debts must be instituted in the county where the land or some part thereof lies. If the land to be sold consists of one or more contiguous tracts lying in more than one county or consists of two or more separate tracts lying in different counties, proceedings may be instituted in any county in which a part of the land is situate, and the court of such county wherein the proceedings for sale are first brought shall have jurisdiction to proceed to a final disposition of said proceedings as if all of said land were situate in the county where the proceedings were instituted unless the court making the order of sale shall fix some place other than at the courthouse door of the county in which the proceeding was instituted; the place and time of sale shall be as directed in the order of the court. Where the land to be sold consists of one or more contiguous tracts lying in more than one county, said land shall be advertised in all counties in which any part of said land lies, but the sale shall be conducted at the courthouse door of the county in which the proceeding was instituted. Where the land consists of two or more distinct tracts lying in different counties, each tract shall be advertised in and sold at the courthouse door of the county in which it lies. Certified copies of the proceedings under the seal of the court of the county in which the proceedings were instituted, together with certified copies of the letters testamentary or letters of administration of the personal representative, shall be filed in the office of the clerk of superior court of each county wherein any part of the land lies and shall be recorded in the record of orders and decrees in special proceedings in said office. (Rev., s. 68; Code, s. 1436; 1868-9, c. 113, s. 42; 1923, c. 55; 1935, c. 43; 1937, c. 70.)

Editor's Note.—The 1937 amendment inserted that part of the second sentence of the second paragraph beginning with the word "unless." As the first paragraph was not affected by the amendment it is not set out here.

This amendment would seem to meet the demands of convenience where the part of the land to be sold is situated in a county different from that in which the proceedings to sell were instituted. It is likely that more interested purchasers will be found in the county where the land lies. 15 N. C. Law Rev., No. 4, p. 352.

Contents of Petition to Sell Lands.—In proceedings to sell lands to make assets the petition should set forth, *inter alia*, as required by § 79, the value of the personal estate, as near as may be ascertained, and the application thereof, and an allegation merely that the personalty is insufficient is defective. *Neighbors v. Evans*, 210 N. C. 550, 187 S. E. 796.

Applied in *Odom v. Palmer*, 209 N. C. 93, 182 S. E. 741; *Caffey v. Osborne*, 210 N. C. 252, 186 S. E. 364.

§ 75. When court may order rental.

Where an administrator, in good faith pending the mortgaging of property of the estate to pay debts, personally pays the debts of the estate, he is entitled to be subrogated to the rights of the creditors whose debts he had paid, and upon the execution of the mortgage, upon order of court, is entitled to repay himself from the proceeds of the loan. *Caffey v. Osborne*, 210 N. C. 252, 186 S. E. 364.

§ 76. Lands conveyed by heir within two years sold.

Mortgage after Two Years Followed by Sale Is Valid.—Where an heir executed a deed of trust more than two years after the granting of letters testamentary, and it was foreclosed, and the purchaser at the sale transferred title to a bona fide purchaser who had no actual knowledge that the personal assets were insufficient to pay debts of the estate, it was held that the fact that it appeared from the records that the estate had not been settled does not amount to notice that the personalty was insufficient, and the purchaser was a bona fide purchaser without notice, and the land is not subject to sale. *Johnson v. Barefoot*, 208 N. C. 796, 182 S. E. 471.

§ 79. Contents of petition for sale.

The Purpose of Requisites in Application.—In accord with original. See *Neighbors v. Evans*, 210 N. C. 550, 187 S. E. 796.

§ 87. Undevised realty first sold.

Cited in *Anderson v. Bridgers*, 209 N. C. 456, 184 S. E. 78.

§ 88. Specifically devised realty; contribution.

Cited in *Anderson v. Bridgers*, 209 N. C. 456, 184 S. E. 78.

Art. 14. Proof and Payment of Debts of Decedent

§ 93. Order of payment of debts.

Strict Construction.—In accord with original. See *Park View Hospital Ass'n v. Peoples Bank, etc., Co.*, 211 N. C. 244, 189 S. E. 766.

Section Construed to Favor Bankruptcy Rule.—Upon the death of an obligor the administration laws step in and determine the settlement of his estate. These have heretofore been construed by the supreme court to favor the bankruptcy rule. Thus a secured creditor is required to exhaust his security and then prove his claim for any balance still remaining or unpaid. *Rierson v. Hanson*, 211 N. C. 203, 205, 189 S. E. 502.

If decedent's estate be not sufficient to pay his debts in full, then they are to be paid in classes, with those of the last class, if and when reached, sharing ratably in what is left. *Rigsbee v. Brogden*, 209 N. C. 510, 512, 184 S. E. 24, citing *Farmville Oil, etc., Co. v. Bourne*, 205 N. C. 337, 171 S. E. 368; *First Security Trust Co. v. Lentz*, 196 N. C. 398, 145 S. E. 776; *Murchison v. Williams*, 71 N. C. 135.

Tax-Sale Certificate Is Not a Preferred Claim.—A tax-sale certificate in the hands of a remainderman, representing taxes paid by the remainderman during the lifetime of the life tenant, may not be proved as a preferred claim against the estate of the life tenant, since the remainderman's sole remedy upon the tax-sale certificate is by foreclosure under the provisions of § 8028. *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

Taxes Assessed Are Preferred Claim.—As a life tenant is liable for taxes assessed against the property during his lifetime, under § 7982, when he dies without paying the same they constitute a claim against his estate and are payable in the third class. *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

Charges for Water and Gas Connection Are Not a Preferred Claim as Taxes.—Charges for water and gas connections, incurred during the lifetime of a life tenant and unpaid at his death, do not constitute a preferred claim against his estate as taxes assessed on the estate prior to his death, since in no event would such charges stand upon a higher plane than assessments for permanent improvements. *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

Nor Are Assessments for Public Improvements.—See *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

The words "medical services," include all services rendered to the deceased, because of his illness, upon the advice of his physician, which were reasonably necessary for his care and comfort, and for his proper treatment by his physicians. *Park View Hospital Ass'n v. Peoples Bank, etc., Co.*, 211 N. C. 244, 249, 189 S. E. 766.

Board of Nurses Included in Medical Services.—The Board

of graduate nurses who attended the deceased while he was a patient in plaintiffs' hospital was a claim included in the term "medical services" as used in this section. *Park View Hospital Ass'n v. Peoples Bank, etc., Co.*, 211 N. C. 244, 189 S. E. 766.

§ 94. No preference within class.

Stated in *Park View Hospital Ass'n v. Peoples Bank, etc., Co.*, 211 N. C. 244, 189 S. E. 766.

§ 101. If claim not presented in twelve months, representative discharged as to assets paid.

Effect of Failure to Present Claim within Twelve Months.

—Under this section a claimant who has not presented his claim within twelve months from the first publication of the general notice to creditors, is allowed to assert his demand only as against undistributed assets of the estate and without cost against the executor. In re *Estate of Bost*, 211 N. C. 440, 443, 190 S. E. 756.

Cited in *Jackson v. Thomas*, 211 N. C. 634, 191 S. E. 327.

Art. 15. Accounts and Accounting

§ 105. Annual accounts.

Prima Facie Evidence Only.—

In accord with original. See *Braddy v. Pfaff*, 210 N. C. 248, 186 S. E. 340.

Recorded Account Is Competent Evidence in Collateral Suit.—The account required by this section must be recorded as required in § 952. Such account therefore is not hearsay but is competent evidence in a collateral suit. *Braddy v. Pfaff*, 210 N. C. 248, 186 S. E. 340.

Duty of Clerk to Accept Executor's Annual Account.—Where property is devised or bequeathed by a will, upon certain trusts, and the testator does not appoint a trustee, it is the duty of the executor, to carry out the provisions of the will. It is error for the clerk to refuse to accept an annual account tendered by the executor for a year more than two years after the executor qualified but during the life of the trust estate. In re *Wachovia Bank, etc., Co.*, 210 N. C. 385, 390, 186 S. E. 510. See § 109 and the note thereto.

§ 108. Gravestones authorized.

Section Inapplicable.—This section was held inapplicable where executors, in obedience to testamentary instructions, expended more than \$100 for a gravestone without order of court when the estate appeared to be solvent though in fact it was insolvent. In re *Estate of Bost*, 211 N. C. 440, 190 S. E. 756.

§ 109. Final accounts.

When Section Not Applicable.—This statutory requirement is not applicable where the duties imposed upon the executor by the will cannot be fully performed within two years from his qualification. In re *Wachovia Bank, etc., Co.*, 210 N. C. 385, 390, 186 S. E. 510. See § 178.

Review of Order to File Final Account and Turn Over Assets.—Where the clerk orders an executor to file final account and turn over the assets of the trust estate to itself as trustee, which order is made as a matter of law upon the facts found and not as a matter of discretion, the order is reviewable by the Superior Court upon appeal. In re *Wachovia Bank, etc., Co.*, 210 N. C. 385, 186 S. E. 510.

§ 124. Exception to report; final report and judgment.

Applied in *In re Estate of Bost*, 211 N. C. 440, 190 S. E. 756.

§ 125. Appeal from judgment; security for costs.

Applied in *In re Estate of Bost*, 211 N. C. 440, 190 S. E. 756.

§ 130. Contents of judgment; execution.

Under the facts and circumstances of the case a judgment against the estate of the deceased was held irregular. *Hood v. Stewart*, 209 N. C. 424, 184 S. E. 36.

§ 131. When judgment to fix with assets.

A judgment against an executor or administrator in his representative capacity merely establishes the debt sued on and does not constitute a lien upon the lands of the estate, in the absence of a stipulation in the judgment to the contrary, until leave of court is granted for execution for failure of the representative to pay the ratable part of such judgment. *Tucker v. Almond*, 209 N. C. 333, 183 S. E. 407.

Where a warranty deed was not registered until several years after the death of the grantor, during which time

several judgments were obtained against the personal representative of the grantor, and the grantee in the deed sold same after the judgments had been docketed to a purchaser for value by warranty deed, it was held that under the provisions of this and §§ 132 and 136 the judgments did not constitute a lien on the land in violation of the warranty against encumbrances. *Id.*

Applied in *Hood v. Stewart*, 209 N. C. 424, 184 S. E. 36.

§ 132. Form and effect of execution.

See the note to § 131 in this Supplement.

Applied in *Hood v. Stewart*, 209 N. C. 424, 184 S. E. 36.

§ 135. Suits for accounting at term.

Concurrent Jurisdiction.—

Under this section the distributees of an estate may bring suit originally in the Superior Court against the administrator for an accounting and for a breach of his bond. *Leach v. Page*, 211 N. C. 622, 191 S. E. 349.

Action to recover for personal services rendered testator's wife is properly brought in the Superior Court where it involves a construction of the will and an accounting. *Meares v. Williamson*, 209 N. C. 448, 184 S. E. 41.

§ 136. Proceedings against land, if personal assets fail.

Applied in *Hood v. Stewart*, 209 N. C. 424, 184 S. E. 36.

Art. 16. Distribution

§ 137. Order of distribution.

Applied in *Lopez v. United States*, 82 F. (2d) 982.

§ 139. Children advanced to render inventory; effect of refusal.

Expenses for Schooling, etc., Properly Charged as Advancements.—Intestate's grandchild, a daughter of intestate's deceased daughter, was charged with advancements for sums paid by intestate for her schooling and expenses incurred after she was eighteen or twenty years old, but no charge was made for expenses of rearing the grandchild. Upon the facts found by the referee the charge of advancements was correct. *Wolfe v. Galloway*, 211 N. C. 361, 190 S. E. 213.

Art. 18. Action by and against Representative

§ 160. Death by wrongful act; recovery not assets; dying declarations.

I. IN GENERAL.

Applied in *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631; *Lemings v. Southern Ry. Co.*, 211 N. C. 499, 191 S. E. 39.

Cited in *Peterson v. McManus*, 208 N. C. 802, 182 S. E. 483; *Winslow v. Carolina Conference Ass'n*, 211 N. C. 571, 191 S. E. 403.

II. LIMITATION OF THE ACTION.

The fact that an action is not instituted within the limitation prescribed may be taken advantage of by demurrer when the dates appear as a matter of record. *George v. Atlanta, etc., Ry. Co.*, 210 N. C. 58, 185 S. E. 431.

Where it appeared upon the face of the record that more than one year had elapsed between the accrual of the cause of action and the filing of the amended complaint, the demurrer of the corporate defendants was properly sustained, the action against them not having been instituted within the limitation prescribed by this section. *Id.*

§ 166. When creditors may sue on claim; execution in such action.

See the note to § 131 in this Supplement.

Art. 19. Representative's Powers, Duties and Liabilities

§ 170. Representative may maintain appropriate suits and proceedings.

As to discovery of assets, see §§ 65(b)-65(e).

Art. 20. Construction and Application of Chapter

§ 178. Powers under will not affected.

See §§ 105 and 109 and the notes thereto.

CHAPTER 2

ADOPTION OF MINORS

§ 191(1). Petition for adoption and change of name.—Any proper adult person or husband and wife, jointly, who have legal residence in North Carolina may petition the superior court of the county in which he or they have legal residence or the county in which the child resides, or of the county in which the child had legal residence when it became a public charge, or of the county in which is located any agency or institution operating under the laws of this state having guardianship and custody of the child, for leave to adopt a child and for a change of the name of such child. Provided, that in every instance where the child is born outside of the state of North Carolina, said child shall have been an actual resident of this state for a period of at least one year. Such petition for adoption shall be filed in duplicate on standard form to be supplied by the state board of charities and public welfare, one form to be held in the files of the said superior court, and the other to be sent to said state board of charities and public welfare. (1935, c. 243; 1937, c. 422.)

Editor's Note.—The 1937 amendment limited the one year's residence requirement to children born outside of state.

For a critical analysis and appraisal of this chapter, see an article appearing in 13 N. C. Law Rev., No. 4, p. 355.

CHAPTER 2A

AERONAUTICS

Art. 1. Municipal Airports

§ 191(a). Definition.

Cited in *Goswick v. Durham*, 211 N. C. 687, 191 S. E. 728.

CHAPTER 3

ALIENS

§ 192. Rights as to real property.

Editor's Note.—This section was inadvertently repealed by P. L. 1935, c. 243. See an article appearing in 13 N. C. Law Rev., No. 4, p. 355.

CHAPTER 4

ATTORNEYS AT LAW

Art. 1. Licenses and Qualifications of Attorney; Unauthorized Practice of Law

§ 199(a). Corporations and persons other than members of state bar prohibited from practicing law; exceptions. — It shall be unlawful for any corporation or any person or association of persons, except members of the bar of the state of North Carolina admitted and licensed to practice as attorneys at law, to appear as attorney or counsellor-at-law in any action or proceeding in any court in this state or before any judicial body or the North Carolina industrial commission or the unemployment compensation commission; (1937, c. 155, s. 1.)

Editor's Note.—The 1937 amendment inserted the words "or the unemployment compensation commission" immediately preceding the first semicolon in this section. The rest of the section, not being affected by the amendment, is not set out here.

This section is constitutional and valid, the right to practice law being subject to legislative regulation within con-

stitutional restrictions and limitations, and the statute not being in contravention of any provision of the state or federal constitutions. *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540.

The right to practice law is personal and may not be exercised by a corporation either directly or indirectly by employing lawyers to practice for it. *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540.

What Is Deemed Practice of Law.—The practice of law is not limited to the conduct of cases in court, but embraces, in its general sense, legal advice and counsel and the preparation of legal documents and contracts by which legal rights are secured, although such matter may or may not be pending in court. *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540.

Services of Motor Clubs Held to Violate Section.—Where defendant corporations, as a part of their services, were engaged in giving legal advice, in employing attorneys for members, in allowing lay members of the incorporated club to write letters on club stationery to persons involved in accidents with members of the club advising that such persons were liable in damages in law for negligence in causing such accidents, and in drawing up receipts stating that a certain sum was received as settlement of such damages when collections were made as a result of such letters, they were held to be engaged in the practice of law in violation of this section. *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540.

§ 199(b). Further prohibition as to practice of law by corporation; exception. — It shall be unlawful for any corporation to practice or appear as an attorney for any person other than itself in any court in this state, or before any judicial body or the North Carolina industrial commission or the unemployment compensation commission; (1937, c. 155, s. 2.)

Editor's Note.—The 1937 amendment inserted the words "for the unemployment compensation commission" immediately preceding the first semicolon in this section. The rest of the section, not being affected by the amendment, is not set out here.

Art. 6. North Carolina State Bar

§ 215(1). Creation of North Carolina state bar as an agency of the state.

Quoted in *In re Parker*, 209 N. C. 693, 184 S. E. 532.

§ 215(3). Government.

Editor's Note.—Public Laws 1937, c. 51, s. 1, struck out the former last paragraph of this section providing: "Neither a councillor nor any officer of the council or of the North Carolina state bar shall be deemed as such to be a public officer as that phrase is used in the constitution and laws of the state of North Carolina." As no other change was made the section is not set out here.

For a discussion of the 1937 amendment to this and the following three sections, see 15 N. C. Law Rev., No. 4, p. 330 et seq.

§ 215(9). Powers of council.—Subject to the superior authority of the general assembly to legislate thereon by general laws, and except as herein otherwise limited, the council is hereby vested, as an agency of the state, with the control of the discipline, disbarment and restoration of attorneys practicing law in this state: Provided, that from any order suspending an attorney from the practice of law and from any order disbarring an attorney, an appeal shall lie in the manner hereinafter provided, to the superior court of the county wherein the attorney involved resides. The council shall have power to administer this article; to formulate and adopt rules of professional ethics and conduct; to publish an official journal concerning matters of interest to the legal profession, and to do all such things necessary in the furtherance of the purposes of this article as

are not prohibited by law. (1933, c. 210, s. 9; 1935, c. 74, s. 1; 1937, c. 51, s. 2.)

Editor's Note.—Prior to the 1937 amendment an appeal lay "as of right" to the regular superior court judge.

§ 215(10)b. Pay of board of law examiners.—Each member of the board of law examiners shall receive the sum of fifty dollars for his services in connection with each examination and shall receive his actual expenses of travel and subsistence while engaged in duties assigned to him, provided that for transportation by the use of private automobile the expense of travel shall not exceed five cents per mile. (1935, c. 33, s. 2; 1937, c. 35.)

Editor's Note.—Prior to the 1937 amendment the maximum for subsistence was four dollars per day. The former reference to the member of the supreme court was omitted by the amendment.

§ 215(11). Discipline and disbarment. — The council or any committee of its members appointed for that purpose shall have jurisdiction to hear and determine all complaints, allegations, or charges of malpractice, corrupt or unprofessional conduct, or the violation of professional ethics, made against any member of the North Carolina state bar; may administer the punishments of private reprimand, suspension from the practice of law for a period not exceeding twelve months, and disbarment as the case shall in their judgment warrant, for any of the following causes: 1. Commission of a criminal offense showing professional unfitness; 2. Detention without a bona fide claim thereto of property received or money collected in the capacity of attorney; 3. Soliciting professional business; 4. Conduct involving willful deceit or fraud or any other unprofessional conduct; 5. Detention without a bona fide claim thereto of property received or money collected in any fiduciary capacity; 6. The violation of any of the canons of ethics which have been adopted and promulgated by the council of the North Carolina state bar; may invoke the processes of the courts in any case in which they deem it desirable to do so, and shall formulate rules of procedure governing the trial of any such person which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references. Such rules shall provide for notice of the nature of the charges and an opportunity to be heard; for a complete record of the proceedings for purposes of appeal to the superior court of the county wherein the attorney involved resides on the record made before the council or the committee as the case may be. Upon such appeal to the superior court the accused attorney shall have the right to a trial by jury of the issues of fact arising on the pleadings, but such trial shall be only upon the written evidence taken before the trial committee or council. From the decision of the superior court the council and the accused attorney shall each have the right of appeal to the supreme court of North Carolina. Trial before the committee appointed for that purpose by the council shall be held in the county in which the accused member resides: Provided, however, that the committee conducting the hearing shall have power to remove the same to any county in which the offense, or any part thereof, was committed, if in the opinion of such committee the ends of justice or convenience of witnesses require such removal. The procedure herein provided

shall also apply in all cases of discipline or disbarments arising under that portion of section eleven not hereby amended. (1933, c. 210, s. 11; 1937, c. 51, s. 3.)

Editor's Note.—The 1937 amendment so changed this section that a comparison here is not practical.

§ 215(19). Inherent powers of courts unaffected.—Nothing contained in this article shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys. (1937, c. 51, s. 4.)

CHAPTER 5

BANKS

Art. 2. Creation

§ 217(p). Fiduciary powers and liabilities of merged banks or trust companies.

Editor's Note.—A distinction is drawn between "consolidation" and "merger." See *Braak v. Hobbs*, 210 N. C. 379, 186 S. E. 500.

Consolidated Bank Succeeds to Power as Trustee under Deed of Trust.—A bank, created as a result of a consolidation of several state banks, may properly exercise the power of sale contained in a deed of trust in which one of its constituent banks was named trustee, upon default by the trustor, since under this section, the consolidated bank succeeds to such power. *Braak v. Hobbs*, 210 N. C. 379, 186 S. E. 500.

This section, although in form an independent statute, is in reality an amendment of chapter 77, Public Laws of North Carolina, 1925, and is therefore applicable in the instant case, although the deed of trust involved was executed prior to its enactment. *Braak v. Hobbs*, 210 N. C. 379, 384, 186 S. E. 500. See *Bateman v. Sterrett*, 201 N. C. 59, 159 S. E. 14.

Art. 3. Dissolution and Liquidation

§ 218(b). Commissioner of banks may take charge, when.

Presumption Exists That Bank Complied with Prerequisites before Resuming Operation.—See *People's Bank v. Fidelity, etc., Co.*, 4 F. Supp. 379, 382.

§ 218(c). Liquidation of banks, when commissioner to take possession.

The Commissioner of Banks Acts in a Capacity Equivalent to a Receiver.—See *Hood v. North Carolina Bank, etc., Co.*, 209 N. C. 367, 184 S. E. 51.

And the bank as a legal entity is not dissolved and does not cease to exist, but its powers are exercised by the commissioner (formerly the Corporation Commission) for the purpose of converting the assets, paying its liabilities, and distributing the surplus, if any, among the stockholders. *People's Bank v. Fidelity, etc., Co.*, 4 F. Supp. 379, 383.

No New Cause of Action Is Created Where Commissioner Is Made a Party to Previous Action by Bank.—See *People's Bank v. Fidelity, etc., Co.*, 4 F. Supp. 379, 383.

An order authorizing the liquidating agent to sell a stock assessment judgment affects only the liquidating agent and whoever purchases by virtue thereof, and so far as stockholders are concerned, the order is res inter alios acta. In *re Carolina State Bank*, 208 N. C. 509, 181 S. E. 621.

An action on a note by the Commissioner of Banks, etc., is properly brought in the county in which the insolvent bank is situate and of which the liquidating agent is a resident, and defendants' motion for change of venue to the county of their residence is properly refused. *Hood v. Progressive Stores*, 209 N. C. 36, 182 S. E. 694.

Complaint in action to vacate stock assessment failing to allege plaintiff was not a stockholder at time of bank's closing, fails to state a cause of action for the relief sought, and an allegation that there was no certificate of stock standing in plaintiff's name upon the books of the bank at the time is insufficient, since plaintiff may be an equitable owner of stock and liable to assessment notwithstanding such fact. *Oliver v. Hood*, 209 N. C. 291, 183 S. E. 657.

Notice of Appeal from Assessment Must Be Given within Ten Days of Docketing.—Although no time is fixed by this section within which a stockholder must give notice of appeal from the assessment levied against him, the stat-

ute provides that when the assessment is docketed it shall have the force and effect of a judgment, therefore under § 641 notice of appeal from such assessment must be given within ten days after the docketing of the assessment, and when notice of appeal is not given within the time required and no application for certiorari made, the stockholder loses his right to appeal and the assessment is final and conclusive. In *re Citizens' Bank*, 209 N. C. 216, 183 S. E. 410.

If right to appeal is lost, stockholder may apply for a writ of certiorari. In a proper case he will be granted the writ, and thereby be assured a hearing in the Superior Court on his contention that the assessment was illegal. In *re Citizens' Bank*, 209 N. C. 216, 183 S. E. 410.

The manifest purpose of subdivision (14) is to place the out of town holder of a check or draft on a footing as favorable as the one occupied by the local depositor. The local depositor can present his check and get the cash. If the bank collects the out of town check or draft received through the mails by charging it to the account of its customer, it is the bank's duty, under this statute, to remit the proceeds to the owner, and the owner has a lien thereon. The proceeds of the collection rightfully belong to the owner of the draft; thereafter they are not the property of the bank, and the general creditors have no right to participate therein. *Royal Mfg. Co. v. Spradlin*, 6 F. Supp. 98, 100.

This subdivision clearly supersedes the law as declared by the supreme court in *Corporation Comm. v. Merchant's, etc., Bank*, 137 N. C. 697, 50 S. E. 308, and similar decisions. The statute embodies what was declared to be the law by the United States Supreme Court in *Dakin v. Bayly*, 290 U. S. 143, 54 S. Ct. 113, 78 L. Ed. 229, 90 A. L. R. 999, where it was held that the forwarding bank of a draft for collection is nothing but the agent of the drawer, and that this agency continues until the proceeds are remitted, and that the forwarding bank is not a creditor of the collecting bank and for this reason cannot offset such items against its debt to the collecting bank. Id.

It Is Applicable to National Banks.—See *Royal Mfg. Co. v. Spradlin*, 6 F. Supp. 98.

The lien provided in subdivision (14) is in no wise contingent upon the insolvency of the bank. It attaches, in all cases, "from the date of the charge, entry or collection of any such funds." The lien exists before insolvency and subsequent insolvency does not invalidate it. *Royal Mfg. Co. v. Spradlin*, 6 F. Supp. 98, 101.

The proviso in subdivision (14) does not create a preference; it creates a statutory lien. The legislature used the word "preference" everywhere in the act preceding the proviso, but it used the word "lien" advisedly and to make it apply without regard to preferences. Id.

Upon collection, the agency relation ceases, in the absence of agreement to the contrary, and the position of the bank from then on is that of a mere debtor. *Citizens Nat. Bank v. Fidelity, etc., Co.*, 86 F. (2d) 4, 6, citing *Jennings v. United States Fidelity, etc., Co.*, 294 U. S. 216, 55 S. Ct. 394, 395, 79 L. Ed. 869, 99 A. L. R. 1248.

Where a certificate of deposit sent to the insolvent collecting bank was used in clearance, a draft for the balance on the clearance transaction being received by the insolvent collecting bank, it was held that a debtor and creditor relationship arose and that the creditor's successor was not entitled to preference. *Citizens Nat. Bank v. Fidelity, etc., Co.*, 86 F. (2d) 4.

It makes no difference that, instead of collecting cash on the certificate of deposit, the collecting bank used it in a clearance and received a draft for the balance due upon the clearance, which was ultimately collected in cash. If a bank accepts anything other than cash in payment of a negotiable instrument which it holds for collection, it becomes, under the rules of the common law, liable as a debtor for the amount of the instrument, the reason for the rule being that, as the instrument is payable only in cash, the collecting bank by accepting something other than cash assumes the risk incident to such method of collection and is estopped to deny payment. *Citizens Nat. Bank v. Fidelity, etc., Co.*, 86 F. (2d) 4, 6, citing *Cleve v. Craven Chemical Co.*, 18 F. (2d) 711, 713, 52 A. L. R. 980; *Federal Reserve Bank v. Malloy*, 264 U. S. 160, 44 S. Ct. 296, 68 L. Ed. 617, 31 A. L. R. 1261.

The agency to collect is coupled with an authority in the collecting bank to use the proceeds for its own purposes; and where the collecting bank, in accordance with the usual custom of the banking business, makes a collection in what it chooses to accept as money's worth and thereupon becomes in law liable as a debtor for the amount of the collection, there is no reason to hold that the trust relationship is extended beyond such collection. *Citizens Nat. Bank v. Fidelity, etc., Co.*, 86 F. (2d) 4, 6.

Commissioner's Report under Subdivision (18) Bars Suit to Enforce Statutory Liability of Stockholder.—Where all the debts of the old bank have been discharged and there are no creditors, as evidenced by the report of the commissioner of banks under subdivision (18), it is obvious that suit cannot afterwards be maintained to enforce the statutory liability of an alleged stockholder in that bank. *Hood v. Richardson Realty*, 211 N. C. 582, 588, 191 S. E. 410.

Applied, as to subd. (13), in *In re Carolina State Bank*, 208 N. C. 509, 181 S. E. 621; as to subd's (10), (11), in *Hood v. Elder Motor Co.*, 209 N. C. 303, 183 S. E. 529; as to subd. (13), in *Hood v. Hewitt*, 209 N. C. 810, 185 S. E. 161.

Cited in *In re United Bank, etc., Co.*, 209 N. C. 389, 184 S. E. 64; *Hood v. Clark*, 211 N. C. 693, 191 S. E. 732.

Art. 4. Stockholders

§ 219(a). Stockholders, individual liability of.

Liability Contractual.—

In accord with original. See *Hood v. Richardson Realty*, 211 N. C. 582, 191 S. E. 410.

Statutory Liability Is for Benefit of Depositors and Other Creditors.—The statutory liability imposed upon stockholders of an insolvent bank is created, not for the benefit of the bank, but for the benefit of depositors and other creditors, and constitutes a fund in the nature of a trust fund in the sense that it should be maintained intact and be available upon insolvency for equitable distribution among all creditors. *Hood v. North Carolina Bank, etc., Co.*, 209 N. C. 367, 184 S. E. 51. See also, *Hood v. Richardson Realty*, 211 N. C. 582, 588, 191 S. E. 410, citing *Hill v. Smathers*, 173 N. C. 642, 92 S. E. 607; *Hood v. Martin*, 203 N. C. 620, 166 S. E. 793; *Cook on Stock & Stockholders*, § 218.

It Can Not Be Regarded as an Assignable Chose in Action.—As the stockholder's liability is fixed by this section and is imposed solely for the benefit of the creditors of the bank in which the stock is held, it cannot be regarded as an assignable chose in action, ordinarily entitling the assignee to sue for its enforcement. Nor would it pass under the general designation of assets. *Hood v. Richardson Realty*, 211 N. C. 582, 588, 191 S. E. 410.

A bank, in consideration of discharging all debts of an insolvent bank, took over all its assets, including the statutory liability of the stockholders of the insolvent bank. This transaction amounted to a sale and purchase and all debts of the insolvent bank being discharged, the statutory liability of its stockholders, upon which no assessment had been made nor judgment docketed, could no longer be enforced, and the transferee bank may not complain that some of the assets so bought were worthless, or maintain the position of creditor of the insolvent bank for the purpose of enforcing the statutory liability of its stockholders in the absence of a contract of guaranty, or undertaking to repay, or facts sufficient to raise the equity of subrogation. *Id.*

Stockholders Can Not Be Relieved of Liability to Prejudice of Creditors.—The principle that a corporation cannot relieve a stockholder of liability for the balance due on unpaid stock to the prejudice of creditors of the corporation applies to the statutory liability of bank stockholders. *Hood v. North Carolina Bank, etc., Co.*, 209 N. C. 367, 184 S. E. 51.

Assignee of Judgment against Executor for Assessment Is Not Entitled to Set Up Personal Liability of Executor.—

Plaintiff assignee of a judgment against an executor in his representative capacity for a stock assessment made on shares of stock of a bank in liquidation, sought by subsequent proceedings to charge the executor personally with liability upon allegations that the executor personally owned the bank stock, legally or equitably. The mere assignment of the judgment, without more, was held to transfer only the rights of the assignor of the judgment in his status of judgment creditor and not his personal rights not incident to such status, and plaintiff was not entitled to set up the personal liability of the executor. *Jones v. Franklin's Estate*, 209 N. C. 585, 183 S. E. 732.

The amendment of 1935 abolished the statutory double liability of stockholders in the banks of this state, and it is made applicable to all shares of stock, issued or to be issued. *Hood v. Richardson Realty*, 211 N. C. 582, 590, 191 S. E. 410.

Where since the levy of the assessment the holders of bank stock have been relieved of their double liability by this section, unless the defendants were rendered liable by the prior original assessment, they cannot now be made liable therefor. *Fidelity Security Co. v. Hight*, 211 N. C. 117, 118, 189 S. E. 174.

Constitutionality of Amendment.—As between a stockholder and one who was a depositor or creditor of a bank prior to the amendment of 1935, the statute, which prescribes that the stockholder's liability shall cease with respect to shares which had theretofore been issued, would seem to offend the constitutional provision of Art. I, sec. 10, of the Constitution of the United States prohibiting the passage of an act impairing the obligation of a contract. But where no rights had vested, and where neither assessment had been levied nor judgment rendered against the stockholder prior to the passage of the Act of 1935, it would seem that the act would avail in the present suit. *Hood v. Richardson Realty*, 211 N. C. 582, 590, 191 S. E. 410.

Applied in *In re Citizen's Bank*, 209 N. C. 216, 183 S. E. 410; *In re United Bank, etc., Co.*, 209 N. C. 389, 184 S. E. 64; *Hood v. Hewitt*, 209 N. C. 810, 185 S. E. 161.

§ 219(c). Executors, trustees, etc., not personally liable.

Assignee of Judgment for Stock Assessment against Executor Is Not Entitled to Set Up Personal Liability of Executor.—Plaintiff assignee of a judgment against an executor in his representative capacity for a stock assessment made on shares of stock of a bank in liquidation, sought by subsequent proceedings to charge the executor personally with liability upon allegations that the executor personally owned the bank stock, legally or equitably. The mere assignment of the judgment, without more, was held to transfer only the rights of the assignor of the judgment in his status of judgment creditor and not his personal rights not incident to such status, and plaintiff was not entitled to set up the personal liability of the executor. *Jones v. Franklin's Estate*, 209 N. C. 585, 183 S. E. 732.

Liability Attaches to Estate or Funds in Hands of Trustees, etc.—By this provision an administrator, executor, guardian, or trustee is not personally liable for the statutory liability on bank stock held in their representative capacities, but such liability attaches to the estate or funds in their hands. *Hood v. North Carolina Bank, etc., Co.*, 209 N. C. 367, 184 S. E. 51.

And where a trustee breached its duty in failing to sell bank stock for reinvestment, its wrongful act will not relieve the estate of the statutory liability to the prejudice of depositors and creditors of the bank. *Id.*

A trust estate is liable for assessment on bank stock owned regardless of the method by which the trust is established, and where shares of bank stock appear on the books of the bank in the name of "executors," the statutory liability thereon of the estate may not be defeated by showing that the stock was held by the executors as executors and trustees under the will for the benefit of minor ulterior beneficiaries, the beneficiaries of the income from the trust estate being of age, and there being nothing on the books of the bank to disclose the trusteeship. *Hood v. North Carolina Bank, etc., Co.*, 209 N. C. 367, 184 S. E. 51.

Liability of Bank Trustee to Trust Estate Can Not Be Set Up as Counterclaim against Liability of Estate.—The liability of a bank trustee to the trust estate for its negligent failure to sell for reinvestment shares of stock of the bank belonging to the trust estate cannot be set up as a counterclaim or set-off against the statutory liability of the estate upon the insolvency of the bank. *In re United Bank, etc., Co.*, 209 N. C. 389, 184 S. E. 64.

§ 219(d). Transferrer not liable, when.

This section exempts those who in good faith transfer stock to any person of full age. *Hood v. North Carolina Bank, etc., Co.*, 209 N. C. 367, 378, 184 S. E. 51.

The question of intent and good faith must be determined by the surrounding circumstances. The fact that the defendant transferred his stock to his insolvent son without consideration, and that this was done six days after the only other commercial bank in the city had failed and been taken over for liquidation by the Commissioner of Banks, would constitute some evidence bearing on the question of the purpose of the transfer and be susceptible of the reasonable inference that it was done in order to evade liability on the stock. *Hood v. Clark*, 211 N. C. 693, 694, 191 S. E. 732.

Word "Suspension" Refers to Stockholders' Liability.—While the word "suspension" is ordinarily defined as a "temporary stop," a "temporary delay, interruption, or cessation," and as to commercial institutions, sometimes, "business failure," yet taken in the connection in which it is used in this section, the reference is to bank stockholders' liability and to the proceedings to enforce it. *Hood v. Clark*, 211 N. C. 693, 694, 191 S. E. 732.

Art. 5. Powers and Duties**§ 220(a). General powers.—**

6. Any commercial bank, savings bank, or trust company, heretofore or hereafter organized under any general or special laws of this state and any national bank doing business in this state, shall have power, in addition to such other powers as it may have:

(a) Upon the making of a loan or discount, to deduct in advance, from the proceeds of such loan, interest at a rate not exceeding six per centum (6%) per annum upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in installments: Provided, no loan made under the provisions of this section shall exceed fifteen hundred (\$1,500.00) dollars to any one person, firm, partnership, or corporation.

(b) Nothing in this section shall be construed as in any wise extending or increasing or decreasing the powers of commercial banks, savings banks, or trust companies or national banks to make loans or discount notes other than as herein or by other laws expressly provided. (1921, c. 4, s. 26; 1923, c. 148, s. 5; 1924, c. 67; 1925, c. 279; 1927, c. 47, s. 5; 1931, c. 243, s. 5; 1933, c. 303; 1935, c. 81, s. 1, c. 82; 1937, c. 154.)

Editor's Note.—The 1937 amendment, directing that the above subsection be added to this section, repeals any provisions of § 225(a), or any other laws, in conflict therewith. The rest of the section, not being affected by the amendment, is not set out.

§ 220(a) 1. Banks, fiduciaries, etc., may invest in bonds guaranteed by United States.—

(3) Bonds Deemed Cash in Settlements by Fiduciaries.—In settlements by guardians, executors, administrators, trustees and others acting in a fiduciary capacity, the bonds and securities herein mentioned shall be deemed cash to the amount actually paid for same, including the premium, if any, paid for such bonds, and may be paid as such by the transfer thereof to the persons entitled and without any liability for a greater rate of interest than the amount actually accruing from such bonds. (1935, c. 164; 1937, c. 433.)

Editor's Note.—The 1937 amendment struck out the words "not exceeding par value thereof" formerly appearing in subsection (3) of this section. The rest of the section, not being affected by the amendment, is not set out here.

For an analysis of this section, see 13 N. C. Law Rev., No. 4, p. 362.

§ 220(a) 2. Banks, fiduciaries, etc., authorized to invest in mortgages of federal housing administration, etc.—(1) Insured Mortgages and Obligations of National Mortgage Associations. — It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, insurance companies, and other financial institutions engaged in business in this state, and for guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this state to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or the moneys in their custody or possession which are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured by the federal housing administrator, in mortgages on real estate which have been accepted for insurance by the federal housing administrator, and in obligation of national mortgage associations.

(2) Insured Loans. — All such banks, trust companies, building and loan associations and insurance companies, and other financial institutions, and also all such guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this state, may make such loans, secured by real estate, as the federal housing administrator has insured or has made a commitment to insure, and may obtain such insurance.

(3) Eligibility for Credit Insurance.—All banks, trust companies, building and loan associations, insurance companies and other financial institutions, on being approved as eligible for credit insurance by the federal housing administrator, may make such loans as are insured by the federal housing administrator.

(4) Certain Securities Made Eligible for Collateral, etc.—Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund, is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator and obligations of national mortgage associations shall be eligible for such purposes.

(5) General Laws Not Applicable.—No law of this state prescribing the nature, amount or form of security or requiring security upon which loans or investments may be made, or prescribing or limiting the rates or time of payment of the interest any obligation may bear, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs. (1935, cc. 71, 378; 1937, c. 333.)

Editor's Note.—The 1937 amendment made this section applicable to building and loan associations, and made other changes.

§ 220(b). Limitations on investments or securities.—The investment of any bonds or other interest-bearing securities of any one firm, individual or corporation, unless it be the interest-bearing obligations of the United States, obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the Federal Home Loan Banks, or the Home Owners' Loan Corporation, state of North Carolina, or other state of the United States, or of some city, town, township, county school district, or other political subdivision of the state of North Carolina, shall at no time be more than twenty per cent of the unimpaired capital and permanent surplus of any bank to an amount not in excess of two hundred and fifty thousand dollars; and not more than ten per cent of the unimpaired capital and permanent surplus in excess of two hundred and fifty thousand dollars: Provided, that nothing in this section shall be construed to compel any bank to surrender or dispose of any investment in the stock or bonds of a corporation owning the lands or buildings occupied by such bank as its banking home, if such stocks or bonds were lawfully acquired prior to the ratification of this act. (1921, c. 4, s. 27; 1927, c. 47, s. 6; 1931, c. 243, s. 5; 1933, c. 359; 1935, c. 199; 1937, c. 186.)

Editor's Note.—The 1937 amendment inserted the words "obligations issued under authority of the Federal Farm

Loan Act, as amended, or issued by the Federal Home Loan Banks, or the Home Owners' Loan Corporation."

§ 220(d). Loans, limitations of.—

Provided further, that the limitations of this section shall not apply to that portion of a loan or investment secured by a guarantee or a commitment made by the reconstruction finance corporation or by the federal reserve bank, or by them jointly. (1921, c. 4, s. 29; 1923, c. 148, s. 6; 1925, c. 119, s. 1; 1927, c. 47, s. 7; 1937, c. 419.)

Editor's Note.—The 1937 amendment directed that the above proviso be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

§ 220(h). Forged check, payment of.

Receipt of Statement by Bookkeeper Who Forged Checks Is Receipt by Corporation.—The receipt of a corporation's bank statement by its bookkeeper is receipt of the statement by the corporation, and it may not recover against the bank for the payment of forged checks when notice is not given within sixty days after such receipt of the bank statement, even though the checks were forged by the bookkeeper, who destroyed them after he received the canceled checks from the bank. Greensboro Ice, etc., Co. v. Security Nat. Bank, 210 N. C. 244, 186 S. E. 362.

§ 220(m). Nonpayment of check in error, liability for.

A bank wrongfully and unlawfully refusing to pay a check breaches its contract and the depositor is entitled to nominal damages at least. Thomas v. American Trust Co., 208 N. C. 653, 182 S. E. 136.

Charge on Injury to Credit and Reputation Not Supported by Evidence Is Error.—In an action to recover for the wrongful and unlawful refusal by a bank to pay a depositor's check, it is error for the court to charge the jury on the issue of damage that it should consider the evidence of damage sustained by plaintiff through injury to his credit and reputation in the community resulting from the bank's wrongful act when there is no evidence that plaintiff's credit or reputation had been injured thereby. Thomas v. American Trust Co., 208 N. C. 653, 182 S. E. 136.

§ 220(r). Establishment of branches.

For a comment on the last proviso of this section, see 13 N. C. Law Rev., No. 4, p. 360.

§ 220(aa). Checks payable in exchange.

This section has no application to certificates of deposit. Citizens Nat. Bank v. Fidelity, etc., Co., 86 F. (2d) 4, 7.

§ 220(gg). Governor empowered to proclaim banking holidays.

Cited in Hood v. Clark, 211 N. C. 693, 191 S. E. 732.

Art. 8. Bank Examiners

§ 223(e). Examiners may make arrest.

For article discussing arrest without a warrant, see 15 N. C. Law Rev., No. 2, p. 101.

Art. 10. Industrial Banks

§ 225(a). Industrial bank defined.

See note under § 220(a).

§ 225(g). Restriction on powers.—No industrial bank shall deposit any of its funds in any banking corporation unless such corporation has been designated as such depository by a vote of a majority of the directors, or of the executive committee, exclusive of any director who is an officer, director, or trustee of the depository, so designated, present at any meeting duly called at which a quorum is in attendance, and approved by the commissioner of banks. (1923, c. 225, s. 7; 1931, c. 243, s. 5; 1937, c. 220.)

Editor's Note.—The 1937 amendment struck out the former provision prohibiting loans for longer than one year.

§ 225(o). Stockholders, individual liability of.

See the note to § 219(a) in this Supplement.

In General.—

This section is applicable, notwithstanding the shares of stock owned are fully paid and nonassessable by the corporation. The section does not affect, or purport to affect, the contract between the corporation and its stockholders with respect to the shares of its stock owned by its stockholder. The liability imposed by it is for the benefit of creditors and not for the benefit of the corporation itself. The effect of the section is to impose upon every stockholder of an industrial banking corporation, organized and doing business under the laws of this state, a statutory liability to all persons who shall become creditors of the corporation, after its enactment. Hood v. Hewitt, 209 N. C. 810, 815, 185 S. E. 161.

This section as construed is constitutional. Hood v. Hewitt, 209 N. C. 810, 185 S. E. 161. See also, Smathers v. Western Carolina Bank, 135 N. C. 410, 47 S. E. 893, wherein a similar construction of § 219(a) was held constitutional.

CHAPTER 6 BASTARDY

§ 276(a). Non-support of bastard child by parents made misdemeanor.—Any parent who willfully neglects or who refuses to support and maintain his or her illegitimate child shall be guilty of a misdemeanor and subject to such penalties as are hereinafter provided. A child within the meaning of sections 276(a)-276(i) shall be any person less than fourteen years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain if such child were the legitimate child of such parent. (1933, c. 228, s. 1; 1937, c. 432, s. 1.)

Editor's Note.—Prior to the 1937 amendment the age specified was ten years.

Constitutionality.—This section does not violate due process of law or impose imprisonment but by the law of the land. State v. Spillman, 210 N. C. 271, 186 S. E. 322.

The willfulness of the neglect is an essential ingredient of the offense, and as such must not only be charged in the bill, but must be proved beyond a reasonable doubt. State v. Spillman, 210 N. C. 271, 186 S. E. 322.

State Must Prove Paternity of Child and Willful Neglect.—It is not necessary that defendant's paternity of the child should be first judicially determined, but the state must prove on the trial, first, defendant's paternity of the child, and then his willful neglect or refusal to support the child. State v. Spillman, 210 N. C. 271, 186 S. E. 322.

Since the statute raises no presumption against a person accused, the failure to support being evidence of willfulness, but raising no presumption thereof, but to the contrary, the statute requires the state to overcome the presumption of innocence both as to the willfulness of the neglect to support the illegitimate child and defendant's paternity of the child. State v. Spillman, 210 N. C. 271, 186 S. E. 322.

Offense Punishable after Effective Date of Section Although Child Born before.—A parent may be prosecuted under this section for willful failure to support his illegitimate child begotten and born before the effective date of the statute, the offense being the willful failure to support an illegitimate child, and it being sufficient if such willful failure occur after the effective date of the statute. State v. Parker, 209 N. C. 32, 182 S. E. 723.

Defective Warrant.—Where the warrant fails to charge that defendant's failure to support his illegitimate child was willful, defendant's motion in arrest of judgment should be allowed. State v. Tarleton, 208 N. C. 734, 182 S. E. 481.

Applied in State v. Moore, 209 N. C. 44, 182 S. E. 692.

§ 276(f). Jurisdiction of inferior courts; issues and orders.—Proceedings under this act shall be instituted only in the superior court of any county of this state and in any county recorder's court, any city recorder's court or municipal court.

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has

been determined in the affirmative the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the particular child who is the object of the proceedings. The court in fixing this sum shall take into account the circumstances of the case, the financial ability to pay and earning capacity of the defendant, and his or her willingness to cooperate for the welfare of the child. The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. Compliance by the defendant with any or all of the further provisions of this act or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof. (1933, c. 228, s. 6; 1937, c. 432, s. 2.)

Editor's Note.—The 1937 amendment directed that the first paragraph above be inserted in lieu of this section. However, as it seems apparent that it was not the legislative intent to repeal the second paragraph, it is also set out here.

The possibility of imposing a sentence of imprisonment in excess of thirty days was thought by some to exclude the jurisdiction of justices of the peace, but in many instances they did exercise jurisdiction. The amendment clearly excludes justices. 15 N. C. Law Rev., No. 4, p. 347.

Acquittal on Charge of Non-Support Bars Appeal Involving Issue of Parentage.—Where the jury found the defendant to be the father of the bastard child, but not guilty of non-support, this is an acquittal. The defendant therefore is not entitled to an appeal under § 4650 for the refusal of the court to allow his motions that the action be dismissed, and that the answer to the issue of parentage be set aside. State v. Hiatt, 211 N. C. 116, 189 S. E. 124.

CHAPTER 8

BONDS

Art. 1. Official Bonds

§ 323(b). **Members of highway patrol and all other peace officers, required to give bond.**—The state of North Carolina shall require of each member of the highway patrol and of every other peace officer employed by the state, elected or appointed, to give a bond with good security payable to the state of North Carolina, in a sum not less than one thousand (\$1,000.00) dollars and not more than two thousand five hundred (\$2,500.00) dollars, conditioned as well for the faithful discharge of his or her duty as such patrolman or other peace officer as for his diligently endeavoring to faithfully collect and pay over all sums of money received. Said bond shall be duly approved and filed in the office of the insurance commissioner, and certified copies of the same by the insurance commissioner shall be received and read in evidence in all actions and proceedings where the original might be. (1937, c. 339, s. 1.)

See § 4530(1).

§ 326(a). **Payment of premiums on official bonds.**—In all cases where the officers or any of them named in section three hundred twenty-six are required to give a bond, and the said of-

ficer or officers are paid by a set or fixed salary, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. (1937, c. 440.)

Art. 4. Actions on Bonds

§ 354. **On official bonds injured party sues in name of state; successive suits.**

Applied in Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506.

§ 356. **Summary remedy on official bond.**

See the note to the next succeeding section.

§ 357. **Officer unlawfully detaining money liable for damages.**

This section must be considered in connection with the preceding section. Pasquotank County v. Hood, 209 N. C. 552, 554, 184 S. E. 5.

This and Preceding Section Are Not Applicable to Liquidation of Banks by Commissioner of Banks.—This and the preceding section are inapplicable to impose liability for damages in a case where the Commissioner of Banks took over the affairs of a bank which had been theretofore constituted the financial agent of the county and which had county funds on deposit and in its possession. Pasquotank County v. Hood, 209 N. C. 552, 555, 184 S. E. 5.

The Commissioner of Banks holding a portion of the fund, subject to the orders of the court and for the purpose of liquidation, could not be said to constitute an "unlawful detention," nor should he in his representative capacity be liable in damages as a penalty for so doing. The punishment would not fall upon a defaulting or delinquent public officer, as intended by the statute, but would penalize funds held in trust for all the creditors and stockholders whose stock assessments have helped to contribute. Id.

CHAPTER 9

BOUNDARIES

§ 361. **Special proceeding to establish.**

Procedure.—As the procedure for the application of this section is that prescribed in § 363, subsec. 4, it is competent for the defendant under §§ 457 and 758 to plead the equitable relief of mutual mistake, having the cause transferred to the civil issue docket, and having the common grantor of the plaintiff and defendant made a party defendant. Smith v. Johnson, 209 N. C. 729, 184 S. E. 486.

§ 362. **Occupation sufficient ownership.**

Sufficiency of Ownership.—When Title Not in Dispute.—

Where it is admitted that plaintiff's title was not in dispute, and that defendant's title was not in dispute except as to the true boundary line, the refusal of the court to submit an issue as to plaintiff's title, in addition to the issue as to the true boundary line, will not be held for error. Clark v. Dill, 208 N. C. 421, 181 S. E. 281.

CHAPTER 11

CITIZENSHIP RESTORED

§ 390(1). **Restoration of rights of citizenship to persons committed to certain training schools.**

—Any person convicted of any crime whereby any rights of citizenship are forfeited, and the judgment of the court pronounced provides a sentence, and such sentence is suspended upon the condition that such person be admitted to and remain at one of the following schools: Eastern Carolina Industrial Training School for Boys, the Stonewall Jackson Manual Training and Industrial School, the Morrison Training School for Negro Boys, or the State Home and Industrial School for Girls, until lawfully discharged, and upon payment of costs, such person may be restored to such forfeited rights of citi-

zenship upon application and petition to the judge presiding at any term of the superior court held in the county in which the conviction was had, at any time after one year from the date of the lawful discharge from any such school. (1937, c. 384, s. 1.)

§ 390(2). Contents of petition; affidavits of reputable citizens; hearing; decree of restoration.—The petition provided for in section 390(1) shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and shall recite that the costs of suit have been paid, the lawful discharge of the applicant from the school to which he or she was admitted, and that applicant has never before had restored to him lost rights of citizenship, which petition shall be verified by the oath of the applicant, and accompanied by the affidavits of ten reputable citizens of the county in which said conviction took place, who shall state that they are well acquainted with the applicant, and that they are of the opinion that the applicant should have restored to him the lost rights of citizenship. The petition shall be heard by the judge during a term of court, and if he is satisfied as to the truth of the matters set out in the petition and the affidavits, he shall decree the applicant's restoration to the lost rights of citizenship and the clerk shall spread the decree upon his minute dockets. (1937, c. 384, s. 2.)

CHAPTER 12

CIVIL PROCEDURE

SUBCHAPTER I. DEFINITIONS AND GENERAL PROVISIONS

Art. 1. Definitions

§ 395. Criminal action.

Subsection Two Affords Remedy against Alleged Unconstitutional Discriminations.—By prosecuting under this section persons doing acts allowed by a statute a remedy against alleged unconstitutional discriminations of a statute is afforded. *Newman v. Watkins*, 208 N. C. 675, 182 S. E. 453.

Which Affords an Adequate Remedy.—Where the alleged acts of the defendant are criminal the plaintiff is not entitled to equitable relief in the nature of an injunction but is furnished an adequate remedy by this section. *Carolina Motor Service v. Atlantic Coast Line R. Co.*, 210 N. C. 36, 185 S. E. 479, 104 A. L. R. 1165.

SUBCHAPTER II. LIMITATIONS

Art. 3. Limitations, General Provisions

§ 411. Defendant out of state; when action begun or judgment enforced.

"The times herein limited" means.

In accord with original. See *Hill v. Lindsay*, 210 N. C. 694, 188 S. E. 406.

§ 415. New action within one year after nonsuit, etc.

Nonsuit Operates as Res Adjudicata Only Where Second Action Is Substantially Identical with First.—

In accord with original. See *Ingle v. Cassady*, 211 N. C. 287, 189 S. E. 776.

Parol Evidence to Prove Nature of Action.—

In accord with original. See *Little v. Bost*, 208 N. C. 762, 182 S. E. 448.

Actions to Which Applicable.—

Where the original action was instituted in the state court within less than three years after the cause of action accrued, and the present action was instituted in the federal court within less than a year after the nonsuit was taken in the original action, there can be no question as to the

protection of this statute being available. *Federal Reserve Bank v. Kalin*, 81 F. (2d) 1003, 1007.

§ 416. New promise must be in writing.

III. PART PAYMENT.

Elements Essential to Take Case Out of Statute.—

In accord with original. See *Bryant v. Kellum*, 209 N. C. 112, 182 S. E. 708.

Art. 4. Limitations, Real Property

§ 425. Title against state.

Sufficiency of Possession.—

The evidence was held sufficient to be submitted to the jury on the issue of plaintiffs' actual, open, continuous, notorious, and adverse possession of the lands sufficient to ripen title in plaintiffs under the provisions of this section, and defendants' motion to nonsuit was erroneously granted. *Owens v. Blackwood Lbr. Co.*, 210 N. C. 504, 187 S. E. 804.

§ 426. Possession presumed out of state.

Quoted in *Owens v. Blackwood Lbr. Co.*, 210 N. C. 504, 187 S. E. 804.

§ 428. Seven years possession under colorable title.

II. NOTE TO SECTION 428.

Cited in *Owens v. Blackwood Lbr. Co.*, 210 N. C. 504, 187 S. E. 804.

§ 430. Twenty years adverse possession.

Tenants in Common—Possession of One Possession of All.—

Where the possession of one cotenant is pursuant to an agreement of all cotenants, his possession for more than twenty years is insufficient to bar his cotenants or their privies. *Stallings v. Keeter*, 211 N. C. 298, 190 S. E. 473.

Question for Jury.—In accord with second paragraph in original. See *Owens v. Blackwood Lbr. Co.*, 210 N. C. 504, 187 S. E. 804; *Caskey v. West*, 210 N. C. 240, 186 S. E. 324.

Art. 5. Limitations, Other than Real Property

§ 437. Ten years.—

5. For the allotment of dower upon lands not in the actual possession of the widow following the death of her husband. (Rev., s. 391; Code, s. 152; C. C. P., ss. 14, 31; 1937, c. 368.)

Editor's Note.—The 1937 amendment directed that the above subsection be added to this section. The rest of the section, not being affected by the amendment, is not set out.

For a discussion of the effect of the amendment, see 15 N. C. Law Rev., No. 4, p. 354.

I. IN GENERAL.

Applied in *Davis v. Cockman*, 211 N. C. 630, 191 S. E. 322.

III. SUBS. (2) SEALED INSTRUMENTS.

Application to Sureties.—

In accord with original. See *North Carolina Bank, etc., Co. v. Williams*, 209 N. C. 806, 185 S. E. 18.

Application to Bills, Notes, etc.—

Where the note contained the word "seal" opposite the signature it was held to be conclusive as to the nature of the instrument. Therefore this section controls as to the time within which an action might be brought. *Federal Reserve Bank v. Kalin*, 81 F. (2d) 1003.

IV. SUBS. (3) MORTGAGE FORECLOSURE.

Foreclosure Held Only Remedy in Absence of Signed Note.—Where the plaintiff did not sign the note and was not bound thereby, having executed only a deed of trust on her land as additional security for the debt, in the event of default in payment foreclosure of the deed of trust is the only action maintainable against her. This section, therefore, prescribes the time within which an action may be brought. *Carter v. Bost*, 209 N. C. 830, 184 S. E. 817.

§ 439. Six years.

II. SUBSECTION ONE—PUBLIC OFFICERS.

Application to Registers of Deeds.—In accord with original. See *Bank of Spruce Pine v. McKinney*, 209 N. C. 668, 184 S. E. 506.

§ 440. Five years.

I. IN GENERAL.

Quoted in *Blevins v. Northwest Carolina Utilities*, 209 N. C. 683, 184 S. E. 517.

§ 441. Three years.

I. IN GENERAL.

Section Not Applicable.—Where the plaintiff did not sign the note and was not bound thereby, having executed only a deed of trust on her land as additional security for the debt, this section has no application. *Carter v. Bost*, 209 N. C. 830, 184 S. E. 817. See § 437, analysis line IV.

Cited in *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873.

IV. SUBSECTION THREE—TRESPASS UPON REALTY.

Application in Action to Recover Damages Resulting from Sewage Disposal Plant.—Where the plaintiff executed a deed of trust, deeded his equity of redemption to his sons, and the deed of trust was foreclosed, all more than three years before the institution of the action, and the plaintiff did not again acquire title until less than a year before the action, it was held in an action to recover damages to the land resulting from defendant's sewage disposal plant that the measure of damages should have been predicated upon the difference in value at the time plaintiff again acquired title and the date of the institution of the action, and an instruction that the jury should assess as damages the difference in the market value of the land on the date of the institution of the action and the date three years prior thereto, constitutes reversible error. *Ballad v. Cherryville*, 210 N. C. 728, 188 S. E. 334.

Cited in *Tesener v. Henrietta Mills Co.*, 209 N. C. 615, 184 S. E. 535.

VI. SUBSECTION SIX—SURETIES OF EXECUTORS, ETC.

Action to recover for alleged breach of bond as administratrix accrues at the time the alleged breach is committed, this subdivision having no provision relating to discovery of the breach of the official bond as is provided for in cases under subdivision (9). *Hicks v. Purvis*, 208 N. C. 657, 182 S. E. 151.

IX. SUBSECTION NINE—FRAUD OR MISTAKE.

Action for Omission from Deed.—Where a reversionary clause was omitted from a deed by mistake of the draftsman it was held that the registration of the deed was insufficient to constitute notice to plaintiffs, and the action was not barred until three years after plaintiffs discovered, or should have discovered, the mistake in the exercise of due diligence. *Ollis v. Board of Education*, 210 N. C. 489, 187 S. E. 772.

Action Barred by Negligence in Asserting Right.—The plaintiffs contended that usurious interest was paid defendant by their agent without their knowledge, and that therefore their action to recover the penalty for usury was not barred although instituted more than two years after the last usurious payment (see § 442). It was held that the plaintiffs are not entitled to invoke the statute, it appearing that plaintiffs did not institute action until more than three years after they had executed a note bearing six per cent interest in renewal of the original note upon which usury was paid, and that plaintiffs were negligent in asserting their rights if any they had. *Ghormley v. Hyatt*, 208 N. C. 478, 181 S. E. 242.

Cited in *McCormick v. Jackson*, 209 N. C. 359, 183 S. E. 369.

X. SUBSECTION X—REALTY SOLD FOR TAXES.

This section does not apply where the owner remains in possession. *Bailey v. Howell*, 209 N. C. 712, 184 S. E. 476.

§ 442. Two years.—Within two years—

1. All claims against counties, cities and towns of this state shall be presented to the chairman of the board of county commissioners, or to the chief officers of the cities and towns, within two years after the maturity of such claims, or the holders shall be forever barred from a recovery thereon; provided, however, that the provisions of this paragraph shall not apply to claims based upon bonds, notes and interest coupons.

(1937, c. 359.)

I. SUBSECTION ONE—POLITICAL SUBDIVISIONS OF STATE.

Editor's Note.—The 1937 amendment added the proviso to paragraph one. The rest of the section, not being affected by the amendment, is not set out.

Cited in *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873.

II. SUBSECTION TWO—PENALTY FOR USURY.

When Statute Begins to Run.—

In accord with original. See *Ghormley v. Hyatt*, 208 N. C. 478, 181 S. E. 242.

Attorney's Fee Held Not Usurious.—See *Woody v. Prudential Life Ins. Co.*, 209 N. C. 364, 183 S. E. 296.

§ 443. One year.

Subsection Three—Action for Libel.—Where, in an action for libel, defendants admit that the article was published in defendant magazine on a certain date, and plaintiff shows that the action was instituted one day less than a year thereafter, defendant is not entitled to nonsuit upon his plea of the one-year statute of limitations. *Harrell v. Goerch*, 209 N. C. 741, 184 S. E. 489.

SUBCHAPTER III. PARTIES

Art. 6. Parties

§ 446. Real party in interest; grantees and assignees.

I. REAL PARTIES IN INTEREST.

A. In General.

Who Is Real Party in Interest.—

The requirement that an action must be maintained by the real party in interest means some interest in the subject matter of the litigation and not merely an interest in the action. *Choate Rental Co. v. Justice*, 211 N. C. 54, 188 S. E. 609.

Exception Does Not Apply to Fire Insurance Companies.—If the exception in this section ("But this section does not authorize the assignment of a thing in action not arising out of contract") operated to prevent a fire insurance company, on paying a loss, from suing the one whose negligence caused the loss, it was repealed by Laws 1899, ch. 54, sec. 43 (see now § 6437), which provides that the insurance company should be subrogated, to the extent of the payment by it, to all right of recovery by assured. *Buckner v. United States Fire Ins. Co.*, 209 N. C. 640, 647, 184 S. E. 520, citing *Hamburg-Bremen Fire Ins. Co. v. Atlantic Coast Line R. Co.*, 132 N. C. 75, 43 S. E. 548.

Stated in *Lawson v. Langley*, 211 N. C. 526, 191 S. E. 229.

B. Personal Actions.

Transferee of Claim.—The discretion conferred by § 461 is a sound discretion to be exercised where the circumstances render it proper that the action be prosecuted in the name of the transferee rather than in that of the original plaintiff; and one circumstance calling for the exercise of the discretion is the fact that the transferor, as in this case, has parted with all interest to the transferee, since this section requires that the action be prosecuted in the name of the real party in interest. *Hood v. Bell*, 84 F. (2d) 136, 138.

Action on Note by Liquidating Agent.—In an action on a note executed to a bank, the liquidating agent of the payee bank and the Reconstruction Finance Corporation, to which the note had been pledged as collateral security are both interested parties and may jointly sue the makers of the note. *Hood v. Progressive Stores*, 209 N. C. 36, 182 S. E. 694.

Shippers Are Real Parties in Interest in Action for Discrimination in Rates.—Where certain carriers by truck sought injunctive relief against railroad carriers for discrimination in rates against certain cities and against certain commodities, it was held that the basis for injunctive relief must be an interference or threatened interference with a legal right of the petitioner, not of a third party and that the shippers would be the real parties in interest not the contract truck carriers. *Carolina Motor Service v. Atlantic Coast Line R. Co.*, 210 N. C. 36, 38, 185 S. E. 479, 104 A. L. R. 1165.

Action on Fidelity Bond.—Where stockholders and directors gave their note to the bank for the amount of a shortage due to embezzlement by a cashier to prevent liquidation, and the bank neither surrenders nor assigns the fidelity bond of the defaulting cashier, the bank is the real party in interest and entitled to maintain an action upon the bond. *People's Bank v. Fidelity, etc., Co.*, 4 F. Supp. 379, 382.

Lessor Must Bring Action of Summary Ejectment.—Although an agent of the lessor may make the oath in writing required in summary ejectment under § 2367, the action must be prosecuted in the name of the lessor as the real party in interest, and it may not be maintained in the name of the lessor's rental agent. *Choate Rental Co. v. Justice*, 211 N. C. 54, 188 S. E. 609.

§ 449. Action by executor or trustee.

By this section, fiduciaries are not made the real parties in interest, but are empowered to bring an action for the real beneficiaries. *Lawson v. Langley*, 211 N. C. 526, 191 S. E. 229.

Cited in *Orr v. Twiggs*, 210 N. C. 578, 187 S. E. 791.

§ 450. Infants, etc., sue by guardian or next friend.

Foreign or Domestic Corporation Can Not Be Appointed Next Friend.—Only a person whose fitness has first been ascertained by the court is eligible for appointment by the court as next friend of a minor to institute suit, and neither a foreign nor domestic corporation may be appointed next friend of an infant. In re Will of Roediger, 209 N. C. 470, 184 S. E. 74. See also Appx. VII, part II, § 16 and note.

Stated in Lawson v. Langley, 211 N. C. 526, 191 S. E. 229.

§ 457. Joinder of parties; action by or against one for benefit of a class.

Common Grantor of Plaintiff and Defendant Made Party Defendant after Mutual Mistake.—Where there is allegation of mutual mistake of the common grantor of the plaintiff and defendant, and of the plaintiff and defendant as grantees in the deeds simultaneously executed and delivered to them by said grantor, it was held proper for the court to make the grantor a party defendant. Smith v. Johnson, 209 N. C. 729, 731, 184 S. E. 486.

§ 458. Persons severally liable.

Action on Promissory Note.—Since the holder of a note may sue any or all persons severally liable thereon, an endorser may not attack for fraud a judgment entered against him on the note in a suit maintained by the maker in his capacity of administrator of the holder, in which suit he takes a nonsuit against himself as maker of the note. Castleberry v. Sasser, 210 N. C. 576, 187 S. E. 761.

§ 460. New parties by order of court; intervenor.

Quoted in Peterson v. McManus, 208 N. C. 802, 182 S. E. 483.

§ 461. Abatement of actions.

The discretion conferred by this section is a sound discretion to be exercised where the circumstances render it proper that the action be prosecuted in the name of the transferee rather than in that of the original plaintiff; and one circumstance calling for the exercise of the discretion is the fact that the transferor, as in this case, has parted with all interest to the transferee, since § 446 requires that the action be prosecuted in the name of the real party in interest. Hood v. Bell, 84 F. (2d) 136.

Applied in People's Bank v. Fidelity, etc., Co., 4 F. Supp. 379.

§ 462. Procedure on death of party.

Judgment Set Aside Where No One Authorized to Represent Estate at Trial.—Where it appears that at the time of trial there was no one authorized to represent the estate, this constitutes a meritorious reason for setting aside the judgment, and this result is not affected by the payment of fees to the attorneys purporting to represent defendant by the executor c. t. a., under order of court, since the executor c. t. a. was not made a party to the suit, and did not appear therein. Taylor v. Caudle, 208 N. C. 298, 180 S. E. 699.

SUBCHAPTER IV. VENUE

Art. 7. Venue

§ 463. Where subject of action situated.

I. IN GENERAL.

These sections relating to venue all refer to "actions" and have no reference to the writ of habeas corpus which has been denominated a "high prerogative writ." McEachern v. McEachern, 210 N. C. 98, 102, 185 S. E. 684.

II. ACTIONS RELATING TO REAL PROPERTY.

Injuries to Land.

The action to recover for injuries to land caused by backing water upon it is transitory. Cox v. Oakdale Cotton Mills, 211 N. C. 473, 190 S. E. 750.

§ 464. Where cause of action arose.

Action Dismissed as to Town Is Properly Remanded to County of Origin.—Where the plaintiff instituted a suit in the county of her residence, the county in which defendant administrator qualified, and upon joinder of a town as a party defendant, the action was removed to the county in which the town is located, the town's demurrer being sustained and the action dismissed as to it, it was held that the court properly remanded the action to the county in

which it was originally instituted. Banks v. Joyner, 209 N. C. 261, 183 S. E. 273.

§ 465. Official bonds, executors and administrators.

Compelling Institution of Action in Particular County Does Not Prevent Motion for Removal.—Where a plaintiff was compelled to institute his action in a particular county by reason of the mandate of this section, his act in so doing could not therefore be imputed to him as a voluntary choice of venue so as to prevent him from lodging a motion for removal under § 470(2). Pushman v. Dameron, 208 N. C. 336, 337, 180 S. E. 578.

Hence a trial judge in the exercise of a sound discretion, has the power to remove the cause to another county for trial. Pushman v. Dameron, 208 N. C. 336, 337, 180 S. E. 578.

Since the wording of this section does not necessarily mean that the cause should be actually tried in such county. Pushman v. Dameron, 208 N. C. 336, 337, 180 S. E. 578.

Quoted in Bohannon v. Wachovia Bank, etc., Co., 210 N. C. 679, 188 S. E. 390.

§ 469. Venue in all other cases.

An action on a note by the commissioner of banks, etc., is properly brought in the county in which the insolvent bank is situate and of which the liquidating agent is a resident, and defendants' motion for change of venue to the county of their residence is properly refused. Hood v. Progressive Stores, 209 N. C. 36, 182 S. E. 694.

Stated in Lawson v. Langley, 211 N. C. 526, 191 S. E. 229.

§ 470. Change of venue.

I. IN GENERAL.

Stated in Lawson v. Langley, 211 N. C. 526, 191 S. E. 229.

Cited in Cox v. Oakdale Cotton Mills, 211 N. C. 473, 190 S. E. 750.

II. THE APPLICATION FOR REMOVAL.

A. Time of Demand.

Instituting Action under § 465 Does Not Prevent Motion for Change.—Where the plaintiff under § 465 is bound to institute the action in the county in which defendant gave bond, his act in so doing cannot be imputed to him as a voluntary choice of venue, so as to prevent the lodging of a motion under this section. Pushman v. Dameron, 208 N. C. 336, 180 S. E. 578.

Right of Defendant after Complaint Filed.—Where an order for the examination for an adverse party is granted before the filing of the complaint, a motion for change of venue as a matter of right may be denied without prejudice to defendant's right to move for change of venue after the filing of the complaint, the right of defendant to object to venue, applying after complaint is filed. Bohannon v. Wachovia Bank, etc., Co., 210 N. C. 679, 188 S. E. 390.

SUBCHAPTER V. COMMENCEMENT OF ACTIONS

Art. 8. Summons

§ 476. Contents, return, seal.

Editor's Note.—For act, supplemental to this section, authorizing tax collector to serve process in tax foreclosure suits in Beaufort county, see Public Laws 1937, c. 65, s. 1.

For an analysis of this section, see 13 N. C. Law Rev., No. 4, p. 371.

Summons in Quo Warranto Proceedings Must Meet Requisites of Section.—In order for a valid service of summons in quo warranto proceedings under the provisions of § 881, it is necessary that the true copy of the summons provided for in that section meet the requisites of this section. McLeod v. Pearson, 208 N. C. 539, 181 S. E. 753.

Substantial Compliance.—There is a substantial compliance with this section where the summons commanded the plaintiff to appear and show cause why a trustee should not be appointed in the place of the original trustee. The plaintiff could readily understand what the summons meant. Nall v. McConnell, 211 N. C. 258, 262, 190 S. E. 210.

§ 479. When officer must execute and return.

Cited in Dunn v. Wilson, 210 N. C. 493, 187 S. E. 802.

§ 484. Service by publication.

V. SERVICE BY PUBLICATION IN ACTION FOR DIVORCE.

Applied in Burrowes v. Burrowes, 210 N. C. 788, 188 S. E. 648.

§ 489. Proof of service.

Cited in *Dunn v. Wilson*, 210 N. C. 493, 187 S. E. 802.

§ 491(a). Service upon non-resident drivers of motor vehicles.

This section makes no provision for service on the personal representative of a deceased automobile owner who dies after an accident occurring in this state and before service of process, and service under the statute upon such personal representative confers no jurisdiction on our courts, since an agency, unless coupled with an interest, is terminated by the death of the principal. *Dowling v. Winters*, 208 N. C. 521, 181 S. E. 751.

This section does not warrant service upon a nonresident owner in an action for abuse of process based upon such owner's arrest of plaintiff after a collision between their cars in this state, since the action for abuse of process does not arise out of a collision in which defendant was involved by reason of the operation of his automobile in this state. *Lindsay v. Short*, 210 N. C. 287, 186 S. E. 239.

§ 492. Defense after judgment on substituted service.

Record Held to Disclose "Good Cause Shown" and a Meritorious Defense.—See *Blankenship v. DeCastro*, 211 N. C. 290, 189 S. E. 773.

Art. 9. Prosecution Bonds

§ 494. Suit as a pauper; counsel.

Editor's Note. — The 1937 amendment, applicable only to Durham, Forsyth, Nash and Northampton counties, directed that the following sentence be added to this section: "Provided that before any judge or clerk shall make an order allowing a person to sue as a pauper the applicant shall personally appear before the judge or clerk and be examined under oath, showing to the satisfaction of the court that he is unable to give the undertaking or make the deposit as required by the preceding action."

SUBCHAPTER VI. PLEADINGS

Art. 12. Complaint

§ 506. Contents.

III. STATEMENT OF FACTS CONSTITUTING THE CAUSE OF ACTION.

"A plain and concise statement of facts."—

In accord with original. See *Citizen's Bank v. Gahagan*, 210 N. C. 464, 187 S. E. 580.

§ 507. What causes of action may be joined.

I. IN GENERAL.

Former Equity Practice Followed.—Before this section was adopted, the doctrine of multifariousness was generally understood by the profession, and as the Code has in the main conformed to the equity practice, it may be well to look to those old landmarks for a guide through the mist that envelops the subject. *Barkley v. McClung Realty Co.*, 211 N. C. 540, 543, 191 S. E. 3, citing *Young v. Young*, 81 N. C. 91.

II. CAUSES OF ACTION WITH REFERENCE TO TRANSACTION, OR SUBJECT OF ACTION.

The general rule.—In accord with original. See *Barkley v. McClung Realty Co.*, 211 N. C. 540, 542, 191 S. E. 3.

Series of Transactions Forming One Course of Dealing.—In accord with original. See *Barkley v. McClung Realty Co.*, 211 N. C. 540, 543, 191 S. E. 3.

V. MUST AFFECT ALL PARTIES AND HAVE THE SAME VENUE.

Causes Affecting Different Parties.—

An action against insurer to reform plaintiff's fire insurance policy and to upset settlement and recover an additional sum under the policy as reformed, and against plaintiff's mortgagee to restrain foreclosure and recover rents, is defective in that the several causes do not affect all parties to the action, and the action is properly dismissed upon demurrer for misjoinder of parties and causes. *Mills v. North Carolina Joint Stock Land Bank*, 208 N. C. 674, 182 S. E. 336.

Art. 13. Defendant's Pleadings

§ 509. Demurrer and answer.

For an analysis of summons in inferior courts, see 13 N. C. Law Rev., No. 4, p. 372.

Art. 14. Demurrer

§ 511. Grounds for.

I. IN GENERAL.

By filing answer defendants waive right to demur except for want of jurisdiction or for failure of the complaint to state a cause of action, and such waiver applies to an amended complaint when the amended complaint is substantially the same as the original complaint to which answer was filed. *Schnibben v. Ballard, etc., Co.*, 210 N. C. 193, 185 S. E. 646.

Applied in *Board of Drainage Com'rs v. Jarvis*, 211 N. C. 690, 191 S. E. 514; *Smith v. Sink*, 211 N. C. 725.

Cited in *Leach v. Page*, 211 N. C. 622, 191 S. E. 349.

VI. MISJOINDER OF SEVERAL CAUSES OF ACTION.

What Constitutes Misjoinder.—

Defendant's demurrer to the complaint on the ground of misjoinder in that the complaint stated three separate causes of action, was properly overruled, for although the complaint does not allege that the separate deeds were executed by the defendants, respectively, pursuant to a conspiracy to hinder, delay, and defraud creditors, an inference to that effect is not only permissible but inescapable from the facts alleged. *Barkley v. McClung Realty Co.*, 211 N. C. 540, 191 S. E. 3.

VII. FAILURE TO STATE SUFFICIENT FACTS.

Question of Sufficiency Can Be Presented Only by Demurrer.—The sufficiency of the allegations of a complaint is not presented by a motion that certain designated allegations be stricken from the complaint, on the ground that said allegations are improper, irrelevant, and immaterial. That question can be presented only by a demurrer to the complaint, either in writing or ore tenus. *Poovey v. Hickory*, 210 N. C. 630, 631, 188 S. E. 78.

Applied in *Heater v. Carolina Power, etc., Co.*, 210 N. C. 88, 185 S. E. 447; *Reed v. Farmer*, 211 N. C. 249, 189 S. E. 882; *Swearingen v. Poplin*, 211 N. C. 700, 191 S. E. 746.

Cited in *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

§ 515. Procedure after return of judgment.

Statute Liberally Construed.—

In accord with original. See *Citizens Bank v. Gahagan*, 210 N. C. 464, 187 S. E. 464.

Discretion of Court.—

In accord with original. See *Hood v. Elder Motor Co.*, 209 N. C. 303, 183 S. E. 529.

Amendment after Demurrer Sustained.—Under this section where the supreme court affirms the judgment of the court below sustaining the demurrer of one of defendants, the decision is without prejudice to plaintiff's right to amend the complaint, if so advised. *Byrd v. Waldrop*, 210 N. C. 669, 188 S. E. 101, wherein the court inadvertently referred to § 575.

Art. 15. Answer

§ 521. Counterclaim.

II. CLAIMS ARISING OUT OF PLAINTIFF'S DEMAND.

A. General Rules and Instances.

Tort against Contract Claim.—

In accord with second paragraph in original. See *Weiner v. Equel's Style Shop*, 210 N. C. 705, 188 S. E. 331.

III. CLAIMS ARISING OUT OF INDEPENDENT CONTRACT.

Liability on County Treasurer's Bond against Past Due County Bonds.—Where defendants were indebted to plaintiff county as principal and sureties on the bond of the county treasurer for funds of the county which the treasurer had not accounted for because of the failure of the bank in which the funds were deposited, it was held that the defendants were entitled to offset their debt to the county with past-due county bonds owned by them, since the respective obligations of the county and defendants arose out of contract, and either party might have recovered judgment against the other on their respective obligations, and the county's obligation to defendants existed prior to the institution of the action. *Swain County v. Welch*, 208 N. C. 439, 181 S. E. 321.

§ 523. Contributory negligence pleaded and proved.

Contributory negligence must be pleaded in the answer and proved on the trial, the burden on the issue being upon defendant under this section. *Ramsey v. Nash Furniture Co.*, 209 N. C. 165, 183 S. E. 536.

Defendant must plead contributory negligence in order to be entitled to the submission of the issue to the jury. *Bevan v. Carter*, 210 N. C. 291, 186 S. E. 321.

A demurrer to the complaint on the ground of contributory negligence will not be sustained unless upon the face of the complaint itself contributory negligence is patent and unquestionable. *Ramsey v. Nash Furniture Co.*, 209 N. C. 165, 183 S. E. 536.

Motion to Nonsuit—Scintilla of Evidence.—

Where there is evidence at the trial tending to sustain the allegations of the complaint, the defendant is not entitled to a judgment as of nonsuit, unless all the evidence, considered in the light most favorable to the plaintiff, sustains the defenses, e. g., contributory negligence, relied upon by the defendant in bar of plaintiff's recovery. *Pittman v. Downing*, 209 N. C. 219, 222, 183 S. E. 362.

A four-year-old child is incapable of negligence, primary or contributory. *Bevan v. Carter*, 210 N. C. 291, 186 S. E. 321.

Applied in *Stovall v. Ragland*, 211 N. C. 536, 190 S. E. 899.

Art. 16. Reply

§ 525. Content; demurrer to answer.

Applied in *Bryan v. Acme Mfg. Co.*, 209 N. C. 720, 184 S. E. 471.

Art. 17. Pleadings, General Provisions

§ 535. Pleadings construed liberally.

In Favor of Pleader.—

In accord with original. See *Bailey v. Roberts*, 208 N. C. 532, 181 S. E. 754; *Leach v. Page*, 211 N. C. 622, 191 S. E. 349; *Anthony v. Knight*, 211 N. C. 637, 191 S. E. 323.

Statement of Cause of Action.—

In accord with fourth paragraph in original. See *Ramsey v. Nash Furniture Co.*, 209 N. C. 165, 168, 183 S. E. 536; *Cummings v. Dunning*, 210 N. C. 156, 185 S. E. 653.

Although under this section allegations of pleadings are to be construed liberally "with a view to substantial justice between the parties," § 506 makes it a necessary requirement that the complaint shall contain "a plain and concise statement of the facts constituting a cause of action," which means that it shall contain a plain and concise statement of all the facts necessary to enable the plaintiff to recover. *Citizens Bank v. Gahagan*, 210 N. C. 464, 466, 187 S. E. 580.

The material allegations of the complaint are that at the foreclosure sale the land was bought by the secretary and treasurer of the corporate mortgagee, and that this official was "acting in said capacity at the time he purchased said land at the foreclosure sale, and was acting as the agent of said bank," and that this official shortly thereafter conveyed the land to the mortgagee, which thus indirectly purchased at its own sale. Held that the complaint is not so wholly insufficient that it can be overthrown by a demurrer. *Council v. Greensboro Joint Stock Land Bank*, 211 N. C. 262, 265, 189 S. E. 777.

Cited in *Nall v. McConnell*, 211 N. C. 258, 190 S. E. 210.

§ 537. Irrelevant, redundant, indefinite pleadings.

Editor's Note.—

In addition to the authorities cited under this catchline in the original, see *Leach v. Page*, 211 N. C. 622, 191 S. E. 349.

Power to Make Explicit Ex Mero Motu.—

In accord with original. See *Bowling v. Fidelity Bank*, 209 N. C. 463, 184 S. E. 13.

Discretion of Court.—

Under this section the Superior Court is authorized in the exercise of its discretion to strike from a pleading any allegations of purely evidential and probative facts. *Life Ins. Co. v. Smathers*, 211 N. C. 373, 190 S. E. 484.

Time of Motion.—

In accord with first paragraph in original. See *Bowling v. Fidelity Bank*, 209 N. C. 463, 184 S. E. 13.

A motion to strike out does not challenge sufficiency of the complaint to state a cause of action, but concedes that sufficient facts are alleged, and presents only the propriety, relevancy, or materiality of the allegations sought to be stricken out. *Poovey v. Hickory*, 210 N. C. 630, 188 S. E. 78.

"Oratorical" Allegations Are Not Improper.—Although the allegations are made in language which the defendant thinks is somewhat oratorical, this does not make them improper, irrelevant, or immaterial, nor can it be held that as a matter of law the reading of such allegations to the court, in the presence of the jury, will be prejudicial

to the rights of the defendant. *Poovey v. Hickory*, 210 N. C. 630, 633, 188 S. E. 78.

Allowance of Amendments.—Under this section and § 534 when there is a defective cause of action, although in due form, the plaintiff cannot recover unless the court in its discretion, on reasonable terms, allows an amendment. When a good cause of action is set out, but defective in form, the court may require the pleadings to be made definite and certain by amendment. *Bowling v. Fidelity Bank*, 209 N. C. 463, 184 S. E. 13, citing *Allen v. Carolina Cent. Ry. Co.*, 120 N. C. 548, 27 S. E. 76.

Review of Refusal of Motion to Strike.—

In accord with original. See *Scott v. Bryan*, 210 N. C. 478, 187 S. E. 756.

§ 542. Pleadings in libel and slander.

Where defendants had not pleaded privilege, justification, etc., it was error to withhold case from the jury. *Harrell v. Goerch*, 209 N. C. 741, 742, 184 S. E. 489.

In the absence of a plea of privilege, justification, or mitigating circumstances, the evidence was sufficient to be submitted to the jury on the question of whether the general manager was acting within the scope of his authority in uttering certain slanderous words in an action therefor against the corporation. *Alley v. Long*, 209 N. C. 245, 183 S. E. 294.

§ 543. Allegations not denied, deemed true.

Applied in *Little v. Rhyne*, 211 N. C. 431, 190 S. E. 725.

Art. 18. Amendments

§ 547. Amendments in discretion of courts.

I. IN GENERAL.

Amendment after Demurrer.—The trial court has the discretionary power to allow plaintiff to amend his complaint, upon the hearing of defendants' demurrer thereto, so as to allege that the negligence complained of was the proximate cause of the injury. *Bailey v. Roberts*, 208 N. C. 532, 181 S. E. 754.

III. INTRODUCING NEW CAUSE OF ACTION, DEFENSE OR RELIEF.

Permissible When It Introduces No New Cause.—

In accord with original. See *Wilmington v. Board of Education*, 210 N. C. 197, 185 S. E. 767.

IV. CONFORMING PLEADINGS TO FACTS FOUND.

Leave to Amend to Conform Pleadings to Facts.—

The court has discretionary power to allow a pleading to be amended after the introduction of evidence so as to make the pleading conform to the evidence. *Hicks v. Nivens*, 210 N. C. 44, 185 S. E. 469.

VI. AMENDMENTS AS TO PARTIES.

Generally.—In accord with original. See *North Carolina Bank, etc., Co. v. Williams*, 209 N. C. 806, 185 S. E. 18.

Discretionary and Not Reviewable.—

In accord with original. See *Wilmington v. Board of Education*, 210 N. C. 197, 185 S. E. 767.

V. AMENDMENTS OF PROCESS.

Amendment in Attachment Proceedings.—Amendment under this section may not be permitted where the rights of third persons are injuriously affected. And where the surety on defendant's undertaking has executed a bond in a substantial sum, in accordance with § 815, to discharge the lien on property which has been attached by virtue of a warrant based solely on an unfounded allegation in the affidavit, the allowance of an amendment thereafter to set up a new ground of attachment would have the effect of imposing on the surety an obligation which he did not assume. *Rushing v. Ashcraft*, 211 N. C. 627, 629, 191 S. E. 332.

SUBCHAPTER VII. TRIAL AND ITS INCIDENTS

Art. 19. Trial

§ 564. Judge to explain law, but give no opinion on facts.

II. OPINION OF JUDGE.

A. General Considerations.

The provisions of this section are mandatory. *State v. Evans*, 211 N. C. 458, 459, 190 S. E. 724.

Section Not Confined to Charge.—

In accord with original. See *State v. Oakley*, 210 N. C. 206, 186 S. E. 244.

Motive of Judge Immaterial.—

In accord with original. See *State v. Oakley*, 210 N. C. 206, 186 S. E. 244.

Applied in *Wilson v. Inter-Ocean Cas. Co.*, 210 N. C. 585, 188 S. E. 102; *State v. Batts*, 210 N. C. 659, 188 S. E. 99.

Cited in *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631; *Noland Co. v. Jones*, 211 N. C. 462, 190 S. E. 720.

B. What Constitutes an Opinion.

Direct Language Not Necessary to Constitute Error.—

In accord with original. See *State v. Rhinehart*, 209 N. C. 150, 153, 183 S. E. 388.

Remarks That Fact Is "Sufficiently Proved."—The mortuary tables (see § 1790), are but evidence of life expectancy, to be taken in connection with other evidence of health, constitution, and habits, and an instruction that intestate's life expectancy was so many years, based upon the tables, violates this rule and the rule against an expression of opinion by the court as to whether a fact is sufficiently proven. *Wachovia Bank, etc., Co. v. Atlantic Greyhound Lines*, 210 N. C. 293, 186 S. E. 320.

Remarks Must Be Prejudicial.—

To constitute reversible error, an expression of opinion on the part of the court must be prejudicial to the interest of the appellant. *State v. Puett*, 210 N. C. 633, 188 S. E. 75.

C. Illustrative Cases.

1. Remarks Held Not Erroneous.

b. Remarks Concerning Witnesses.

Defendant Not Prejudiced by Remarks During Cross-Examination of State's Witness.—Remarks of the court in the presence of the jury which tend to discredit a witness will be held for reversible error upon appeal of the injured party, but when such remarks are made during defendant's cross-examination of a state's witness, defendant cannot be prejudiced thereby and his exception thereto cannot be sustained. *State v. Puett*, 210 N. C. 633, 188 S. E. 75.

d. Miscellaneous Remarks.

Question as to Verdict.—The question of the court as to whether the verdict of guilty referred to first degree burglary held to be an inquiry and not an expression of opinion. *State v. Walls*, 211 N. C. 487, 497, 191 S. E. 232.

2. Remarks Held Error.

a. Remarks Concerning a Party to the Trial.

Identification of Defendant.—

Where the state relied upon testimony that tracks had been followed from the scene of the crime to the defendant's room, but did not prove them to be the defendant's, the expression of the court, "You tracked the defendant to whose house?" was held prejudicial, and especially so as the evidence of the state was circumstantial. *State v. Oakley*, 210 N. C. 206, 211, 186 S. E. 244.

b. Remarks Concerning Witnesses.

Remarks Having Effect of Impeaching Witnesses.—Where questions propounded by the court have the effect of impeaching witnesses they are in violation of this section and defendants' exceptive assignments of error thereto must be sustained. *State v. Winckler*, 210 N. C. 556, 187 S. E. 792.

c. Remarks Concerning Weight and Credibility of Testimony.

Concerning Corroboration of Defendant's Testimony.—Where the defendant, charged with homicide, testified as to his version of the fatal killing upon his contention of self-defense, and narrated the actions of himself, his oldest son, and the deceased, and where upon the conclusion of his testimony the court, by interrogation objected to by defendant's counsel, brought out the fact that the son was seventeen years old, and was present in the courtroom, the charge of the court which set forth as the contention of the state that defendant's testimony could not be relied upon because uncorroborated, notwithstanding the fact that defendant's oldest son, who saw what happened, was present in the court room was held to constitute reversible error. *State v. Bean*, 211 N. C. 59, 188 S. E. 610.

III. EXPLANATION OF LAW AND EVIDENCE.

A. General Considerations of the Charge.

Charge Must Be Considered as a Whole.—

Where it appears that the charge, when read contextually as a whole, was not prejudicial in its manner of stating the evidence and contentions of the parties, an exception, based upon detached portions thereof, will not be sustained. *Braddy v. Pfaff*, 210 N. C. 248, 186 S. E. 340.

Charges Held Not to Impinge This Section.—See *State v. Hester*, 209 N. C. 99, 182 S. E. 738; *State v. Hodgin*, 210 N. C. 371, 186 S. E. 495; *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

B. Explanation Required.

1. In General.

Rule Stated.—

In both criminal and civil causes under this section, a judge in his charge to the jury should present every substantial and essential feature of the case embraced within

the issue and arising on the evidence, and this without any special prayer for instructions to that effect. He should state in a plain and correct manner the evidence in the case and explain the law arising thereon, and a failure to do so, when properly presented, shall be held for error. *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 226, 189 S. E. 873, citing *State v. Merrick*, 171 N. C. 788, 88 S. E. 501.

Explanation of Subordinate Features of Case.—

In the absence of a special request for instructions, the failure of the charge to define certain terms constituting a subordinate feature of the charge will not be held for error. *State v. Puckett*, 211 N. C. 66, 189 S. E. 183.

3. Explanation of Law.

Charge Covering Subordinate Features.—

In accord with original. See *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873; *Headen v. Bluebird Transp. Corp.*, 211 N. C. 639, 191 S. E. 331.

Party Must Request.—

Defendant desiring more full or detailed instructions as to any particular phase of evidence or law should request special instructions. *State v. Hendricks*, 207 N. C. 873, 178 S. E. 557.

Charge on Degrees of Crime.—

Where the defendant admits his guilt of murder in the second degree, it is not error for the trial court to act upon the admission, and after fully charging the elements of murder in the first degree, and defining murder in the second degree, to instruct the jury to return a verdict of murder in the second degree if they should fail to find any one of the elements of first degree murder, as defined, beyond a reasonable doubt. *State v. Grier*, 209 N. C. 298, 183 S. E. 272.

Failure to Instruct as to Law of Self Defense.—See *State v. Thornton*, 211 N. C. 413, 190 S. E. 758; *State v. Godwin*, 211 N. C. 419, 190 S. E. 761.

C. Illustrative Cases.

Failure to Define "Conspiracy."—Where the court charged the jury that defendant would be guilty of first degree murder even if one of the others fired the fatal shot, if it was fired in the execution of their unlawful conspiracy and agreement the defendant excepted on the ground that the court did not define "conspiracy." It was held that the exception could not be sustained, in the absence of a special request for instructions, the term "conspiracy" being used synonymously with "agreement," and the charge being clear and easily understood, and defendant being guilty of murder in the first degree under the evidence regardless of the existence of a technical conspiracy. *State v. Puckett*, 211 N. C. 66, 189 S. E. 183.

Instruction on Contributory Negligence.—Instruction as to contributory negligence of 8½ year old child, held to fully comply with this section, where the judge explained that the degree of care required of a child is that he exercise care and prudence equal to his capacity. *Leach v. Varley*, 211 N. C. 207, 210, 189 S. E. 636.

§ 565. Request for instructions.

Section Mandatory.—

In accord with original. See *Hicks v. Nivens*, 210 N. C. 44, 47, 185 S. E. 469.

A party must aptly tender written request for special instructions desired by him in order for an exception to the charge for its failure to contain such instructions to be considered on appeal. *State v. Spillman*, 210 N. C. 271, 186 S. E. 322.

Failure to Give Proper Instruction Is Reversible Error.—When a party tenders a request for a specific instruction, correct in itself and supported by the evidence, the failure of the trial court to give such instruction, in substance at least, either in response to the prayer or in some portion of the charge, is reversible error. *Calhoun v. State Highway, etc., Comm.*, 208 N. C. 424, 181 S. E. 271.

Court Need Not Use Exact Words of Instruction.—

In accord with original. See *Coral Gables v. Ayres*, 208 N. C. 426, 181 S. E. 263.

Applied in *Taylor v. Rierison*, 210 N. C. 185, 185 S. E. 627.

§ 567. Demurrer to evidence.

Judgment as of Nonsuit May Be Entered by Trial Court of Its Own Motion.—A judgment as of nonsuit entered by the trial court of its own motion will not be held for error when the evidence would justify a directed verdict, a nonsuit and a directed verdict having the same legal effect. *Ferrell v. Metropolitan Life Ins. Co.*, 208 N. C. 420, 181 S. E. 327.

Time to Make Motion to Nonsuit.—

Where a party fails to move for judgment as of nonsuit at the close of plaintiff's evidence, its motion thereafter at the close of all the evidence cannot be granted, since the

right to demur to the evidence is waived. *Jones v. Dixie Fire Ins. Co.*, 210 N. C. 559, 187 S. E. 769. See also *State v. Ormond*, 211 N. C. 437, 191 S. E. 22.

Plaintiff Entitled to Benefit of Inferences.—

In accord with original. See *Owens v. Blackwood Lbr. Co.*, 210 N. C. 504, 187 S. E. 804; *Miller v. Wood*, 210 N. C. 520, 187 S. E. 765; *Ford v. Atlantic Coast Line R. Co.*, 209 N. C. 108, 182 S. E. 717; *Teseneer v. Henrietta Mills Co.*, 209 N. C. 615, 184 S. E. 535; *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631; *Harper v. Seaboard Air Line Ry. Co.*, 211 N. C. 398, 190 S. E. 750; *Cole v. Atlantic Coast Line R. Co.*, 211 N. C. 591, 191 S. E. 353; *Debnam v. Whiteville*, 211 N. C. 618, 191 S. E. 325; *Headen v. Bluebird Transp. Corp.*, 211 N. C. 639, 191 S. E. 331; *Independent Oil Co. v. Broadfoot Iron Works*, 211 N. C. 668, 191 S. E. 508.

Not Allowed after Verdict.—

In accord with second paragraph in original. See *Jones v. Dixie Fire Ins. Co.*, 210 N. C. 559, 187 S. E. 769.

Motion Must Be Renewed.—

In accord with original. See *Choate Rental Co. v. Justice*, 211 N. C. 54, 188 S. E. 609.

Waiver.—

In accord with first paragraph in original. See *Ferrell v. Metropolitan Life Ins. Co.*, 208 N. C. 420, 181 S. E. 327; *Stephenson v. Honeycutt*, 209 N. C. 701, 184 S. E. 482.

When Nonsuit Proper.—

In accord with original. See *Blackwell v. Coca-Cola Bottling Co.*, 208 N. C. 751, 182 S. E. 469.

Contributory Negligence.—

In accord with fifth paragraph in original. See *Ramsey v. Nash Furniture Co.*, 209 N. C. 165, 170, 183 S. E. 536; *Hinshaw v. Pepper*, 210 N. C. 573, 187 S. E. 786; *Owens v. Atlantic Coast Line R. Co.*, 207 N. C. 856, 857, 175 S. E. 717.

Originally, under this section, in cases to which it was applicable, there was considerable doubt as to whether a plea of contributory negligence—the burden of such issue being on the defendant—could be taken advantage of on a motion to nonsuit, but it is now well settled that such may be done when the contributory negligence of the plaintiff is established by his own evidence, as he thus proves himself out of court. *Hayes v. Western Union Tel. Co.*, 211 N. C. 192, 193, 189 S. E. 499.

Contributory Negligence—Demurrer Sustained.—

Where the evidence tended to show that plaintiff's intestate was negligent up to the time of the injury and the doctrine of the "last clear chance" is inapplicable, it was held that defendant's demurrer to the evidence should have been sustained. *Lemings v. Southern Ry. Co.*, 211 N. C. 499, 191 S. E. 39.

Evidence Sufficient to Deny Nonsuit.—See *Niblock v. Blue Bird Taxi Co.*, 208 N. C. 737, 182 S. E. 330; *Hampton v. Thomasville Coca-Cola Bottling Co.*, 208 N. C. 331, 180 S. E. 584; *Dilling v. Federal Life Ins. Co.*, 209 N. C. 546, 183 S. E. 752; *Daniels v. Swift & Co.*, 209 N. C. 567, 183 S. E. 748; *Teseneer v. Henrietta Mills Co.*, 209 N. C. 615, 184 S. E. 535.

Applied in Davenport v. Pennsylvania Fire Ins. Co., 207 N. C. 861, 177 S. E. 187; *Burns v. Charlotte*, 210 N. C. 48, 185 S. E. 443; *Woodley v. Combs*, 210 N. C. 482, 187 S. E. 762; *Ollis v. Board of Education*, 210 N. C. 489, 187 S. E. 772; *Exum v. Baumrind*, 210 N. C. 650, 188 S. E. 200; *Joyner v. Dail*, 210 N. C. 663, 188 S. E. 209; *Dixon v. Johnson Realty Co.*, 209 N. C. 354, 183 S. E. 382; *Queen v. DeHart*, 209 N. C. 414, 184 S. E. 7; *McGraw v. Southern Ry. Co.*, 209 N. C. 432, 184 S. E. 31; *Jackson v. Scheiber*, 209 N. C. 441, 184 S. E. 17; *Williams v. Greensboro Fire Ins. Co.*, 209 N. C. 765, 185 S. E. 21; *Federal Life Ins. Co. v. Nichols*, 209 N. C. 817, 185 S. E. 10; *Betts v. Jones*, 208 N. C. 410, 181 S. E. 334; *Planters' Nat. Bank, etc., Co. v. Atlantic Coast Line R. Co.*, 208 N. C. 574, 181 S. E. 635; *Cordell v. Brotherhood of Locomotive Firemen, etc.*, 208 N. C. 632, 182 S. E. 141; *Morris v. Seashore Transp. Co.*, 208 N. C. 807, 182 S. E. 487; *Anderson v. American Mut. Liability Ins. Co.*, 211 N. C. 23, 188 S. E. 642; *Wilson v. Perkins*, 211 N. C. 110, 189 S. E. 179; *Kelly v. Hunsucker*, 211 N. C. 153, 189 S. E. 664; *Yates v. Thomasville Chair Co.*, 211 N. C. 200, 189 S. E. 500; *Breece v. Standard Oil Co.*, 211 N. C. 211, 189 S. E. 498; *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873; *Cashatt v. Brown*, 211 N. C. 367, 190 S. E. 480; *Stovall v. Ragland*, 211 N. C. 536, 190 S. E. 899; *Jackson v. Thomas*, 211 N. C. 634, 191 S. E. 327; *Creesh v. Sovereign Camp, W. O. W.*, 211 N. C. 658, 191 S. E. 840; *Smith v. Sink*, 211 N. C. 725.

Cited in *Keith v. Gregg*, 210 N. C. 802, 188 S. E. 849; *Stallings v. Keeter*, 211 N. C. 298, 190 S. E. 473; *Little v. Rhyne*, 211 N. C. 431, 190 S. E. 725; *Noland Co. v. Jones*, 211 N. C. 462, 190 S. E. 720.

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§ 568. Waiver of jury trial.

Applied in *Best v. Garriss*, 211 N. C. 305, 190 S. E. 221.

§ 569. Findings of fact and conclusions of law by judge.

Separate Conclusions of Facts and Law.—

Where the court fully and completely sets out the facts found by him and renders judgment thereon, an exception that the court did not state his findings of fact and conclusions of law separately as required by this section, cannot be sustained, since the judgment constitutes the court's conclusion of law on the facts found. *Dailey v. Washington Nat. Ins. Co.*, 208 N. C. 817, 182 S. E. 332.

Exceptions.—

In accord with original. See *Best v. Garriss*, 211 N. C. 305, 190 S. E. 221.

Exception to Judgment Presents Only Question Whether Facts Found Support It.—An exception to a judgment rendered in a trial by the court, without exception to the evidence or the court's findings of fact, presents the sole question of whether the facts found support the judgment. *Best v. Garriss*, 211 N. C. 305, 190 S. E. 221.

§ 570. Exceptions to decision of court.

See the next foregoing section and the note thereto.

Art. 20. Reference

§ 572. By consent.

Waiver of Jury Trial.—

In accord with original. See *In re Parker*, 209 N. C. 693, 184 S. E. 532; *Anderson v. McRae*, 211 N. C. 197, 189 S. E. 639.

§ 578. Report; review and judgment.

Power of Judge—Recommittal of Case.—

In accord with original. See *Carolina Mineral Co. v. Young*, 211 N. C. 387, 190 S. E. 520.

Judge of Superior Court may affirm, amend, modify, set aside, etc., the report of a referee. This he may do, however, only in passing upon the exceptions, for in the absence of exceptions to the factual findings of a referee, such findings are conclusive, but his rulings upon questions of fact are conclusive upon the Supreme Court. *Anderson v. McRae*, 211 N. C. 197, 198, 189 S. E. 639.

Art. 21. Issues

§ 580. Defined.

See the note to § 584 in this Supplement.

§ 581. Of law.

See the note to § 584 in this Supplement.

§ 582. Of fact.

See the note to § 584 in this Supplement.

Error to Submit Issue Not Raised by Pleadings.—Where the contract sued on is admitted in the answer, an issue as to the existence of the contract does not arise upon the pleadings, and it is error for the court to submit such issue to the jury. *Fairmont School v. Bevis*, 210 N. C. 50, 185 S. E. 463.

§ 583. Order of trial.

See the note to § 584 in this Supplement.

§ 584. Form and preparation.

Editor's Note.—

In accord with second paragraph in original. See *Stanback v. Haywood*, 209 N. C. 798, 799, 184 S. E. 831, citing *Tucker v. Satterthwaite*, 120 N. C. 118, 27 S. E. 45.

It is within the sound discretion of the trial judge to determine what issues shall be submitted, and to frame them subject to the restrictions, first, that only issues of fact raised by the pleadings are submitted; secondly, that the verdict constitutes a sufficient basis for a judgment; and thirdly, that it does not appear that a party was debarred for want of an additional issue or issues of the opportunity to present to the jury some view of the law arising out of the evidence. *Stanback v. Haywood*, 209 N. C. 798, 799, 184 S. E. 831.

Court Adding Issue of Contributory Negligence.—Where the plaintiff brought suit against two defendants as joint tort-feasors, one defendant answering alleging contributory negligence and one defendant not filing an answer, and where the plaintiff tendered issues of negligence of the answering defendant, the court adding the issue of contributory negligence arising upon the pleading of this defendant, it was held that as a rule the court must submit the

issue arising on the pleadings, but the plaintiff waived this by tendering only one issue as to the answering defendant, and allowing the case to be tried on that theory. *Ammons v. Fisher*, 208 N. C. 712, 182 S. E. 479.

Art. 22. Verdict

§ 590. Exceptions.

Errors in Charge.—

In accord with second paragraph in original. See *Rice v. Swannanoa-Berkeley Hotel Co.*, 209 N. C. 519, 184 S. E. 3.

§ 591. Motion to set aside.

Discretion of the Judge.—

A discretionary order entered at the term of the trial setting aside a verdict as contrary to the weight of the evidence is not reviewable, and an appeal therefrom will be dismissed in the absence of abuse of discretion. *Anderson v. Holland*, 209 N. C. 746, 184 S. E. 511.

SUBCHAPTER VIII. JUDGMENT

Art. 23. Judgment

§ 593. Judgments authorized to be entered by clerk; sale of property; continuance pending sale; writs of assistance and possession.

Appeals from Clerk to Judge.—

In *Ward v. Agrillo*, 194 N. C. 321, 139 S. E. 451, cited in *Howard v. Queen City Coach Co.*, 211 N. C. 329, 331, 190 S. E. 478, it was said that in the absence of statutory provision to that effect, the resident judge of a judicial district has no jurisdiction to hear and determine an appeal from a judgment of the clerk of the Superior Court of any county in his district, rendered pursuant to the provisions of this section, except when such judge is holding the courts of the district by assignment under the statute, or is holding a term of court by exchange, or under a special commission from the Governor.

§ 598. Rendered in vacation; confirmation of judicial sales.—In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings, they may apply for relief to the superior court in vacation, or in term time, at their election.

Sales made by receivers or commissioners appointed by the superior court, unless governed by the provisions of Consolidated Statutes, section two thousand five hundred and ninety-one, as amended, may after ten days from the date of sale, in the absence of objection or raise in bid, be confirmed, or in case of objection or raise in bid, re-sales may be ordered, without notice, in chambers in any county in the judicial district, in which the proceedings are pending, by the resident judge or the judge holding the courts of said district; but this shall not diminish the power of the court in term time to act in such matters as now provided by law where no order has been made under this section. (Rev., s. 559; Code, s. 230; 1871-2, c. 3; 1937, c. 361.)

Editor's Note.—The 1937 amendment added the second sentence of this section.

For article discussing effect of amendment, see 15 N. C. Law Rev., No. 4, p. 338.

§ 600. Mistake, surprise, excusable neglect.

I. IN GENERAL.

Excusable Neglect and Meritorious Defense.—

In accord with first paragraph in original. See *Jones v. Craddock*, 211 N. C. 382, 190 S. E. 224.

Not Applicable to Irregular Verdicts.—

In accord with original. See *Hood v. Stewart*, 209 N. C. 424, 184 S. E. 36.

Meritorious Defense Must Be Shown.—

In accord with original. See *Hooks v. Neighbors*, 211 N. C. 382, 385, 190 S. E. 236.

The remedy provided by this section is restricted to the parties aggrieved by the judgment or order sought to be set aside, and the superior court has no power to set aside a judgment or order once rendered upon motion of a stranger to the cause. In *re Hood*, 208 N. C. 509, 511, 181 S.

E. 621, citing *Smith v. New Bern*, 73 N. C. 303; *Edwards v. Phillips*, 91 N. C. 355.

III. APPLICATION OF THE PRINCIPLES.

A. Neglect of Party.

Absence from Trial.—

Where it appears that a party was in the courtroom at the time the court announced that motions in his case would be heard the following day, his motion to set aside the order made on the day stipulated on the ground of excusable neglect is properly denied. *Abernethy v. First Security Trust Co.*, 211 N. C. 450, 190 S. E. 735.

Failure to Defend after Denial of Motion for Continuance.—Where the trial court finds that defendants and their attorney were present in court, that defendants' motion for a continuance was refused, and that defendants and their attorney thereupon left the court room without definite agreement with the court or opposing counsel, and did not return to defend the case, and that both defendants and their attorney had failed to exercise due diligence, the court's refusal of the motion to set aside the judgment will be affirmed on appeal. *Carter v. Anderson*, 208 N. C. 529, 181 S. E. 750.

IV. PLEADING AND PRACTICE.

Discretion of Judge Not Reviewable on Appeal.—

The findings of fact by the trial court upon the hearing of a motion to set aside a judgment for excusable neglect are conclusive on appeal when supported by any competent evidence. *Carter v. Anderson*, 208 N. C. 529, 181 S. E. 750.

§ 614. Where and how docketed; lien.

I. IN GENERAL.

Applied in *Equitable Life Assur. Soc. v. Russos*, 210 N. C. 121, 185 S. E. 632.

Cited in *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

II. CREATION OF THE LIEN AND PRIORITIES.

A. Sufficiency.

1. Realty.

Docketing First in County of Rendition.—In accord with original. See *Essex Inv. Co. v. Pickelsimer*, 210 N. C. 541, 187 S. E. 813.

§ 618. Payment by one of several; transfer to trustee for payor.

Right to contribution among joint tort-feasors exists solely by provision of this section. *Lumbermen's Mut. Cas. Co. v. United States Fidelity, etc., Co.*, 211 N. C. 13, 188 S. E. 634.

Section Does Not Apply to Insurers of Tort-Feasors.—An insurer of one joint tort-feasor paying the judgment recovered against both joint tort-feasors is not entitled to equitable subrogation as against the insurer of the other tort-feasor, there being no relation between the tort-feasors outside the provision of the statute upon which the doctrine of equitable subrogation can be based, and the insurers of the tort-feasors not coming within the provision of the statute in regard to contribution. *Lumbermen's Mut. Cas. Co. v. United States Fidelity, etc., Co.*, 211 N. C. 13, 188 S. E. 634.

Since the liability of insurance carriers of tort-feasors is contractual and not founded on tort, where no judgment had been recovered against such a carrier by any of the parties to an action, it was held that this section was inapplicable as by its express terms it applies only to joint tort-feasors and to joint judgment debtors. *Gaffney v. Lumbermen's Mut. Cas. Co.*, 209 N. C. 515, 184 S. E. 46; *Lumberman's Mut. Cas. Co. v. United States Fidelity, etc., Co.*, 211 N. C. 13, 188 S. E. 634.

Defendants May File Cross Action to Join Others as Joint Tort-Feasors.—Defendants in an action to recover for negligent injury are entitled, under this section to have other defendants joined with them upon filing a cross action against such other defendants, alleging that such defendants were joint tort-feasors with them in causing the injury. *Mangum v. Southern Ry. Co.*, 210 N. C. 134, 185 S. E. 644.

Section Inapplicable Where Defendant Alleges Sole Liability of Codefendant.—Where the defendant had another party joined as codefendant, and filed answer denying negligence on his part and alleging that the negligence of his codefendant was the sole proximate cause of the injury in suit, but demanding no relief against his codefendant, it was held that the demurrer of the party joined should have been sustained as neither the complaint nor the answer of the original defendant alleged any cause of action against him, this section permitting contribution among joint tort-feasors, being therefore inapplicable since the answer of the original defendant alleges sole liability on the part of his

codefendant and not joint tort-feasorship. *Walker v. Loyall*, 210 N. C. 466, 187 S. E. 565.

Cited in *Peterson v. McManus*, 208 N. C. 802, 182 S. E. 483.

§ 620. Credits upon judgments.

Amount Paid Plaintiff on Covenant Not to Sue as Credit.

—Where some of defendants, sued as joint tort-feasors, pay plaintiff a sum in consideration of a covenant not to sue, and thereafter the action is prosecuted against the other defendants, and judgment recovered against them, the defendants against whom judgment was entered are entitled to have the judgment credited with the amounts paid by the other defendants for the covenant not to sue upon the motion made prior to execution, the motion coming within the spirit if not the letter of this section. *Brown v. Norfolk Southern R. Co.*, 208 N. C. 423, 181 S. E. 279.

§ 622(a). Cancellation of judgments discharged through bankruptcy proceedings.—When a referee in bankruptcy furnishes the clerk of the superior court of any county in this state a written statement or certificate to the effect that a bankrupt has been discharged, indicating in said certificate that the plaintiff or judgment creditor in whose favor judgments against the defendant bankrupt are docketed in the office of the clerk of the superior court have received due notice as provided by law from the said referee, and that said judgments have been discharged, it shall be the duty of the clerk of the superior court to file said certificate and enter a notation thereof on the margin of said judgments.

This section shall apply to judgments of this kind already docketed as well as to future judgments of the same kind.

This section shall not apply to pending litigation with reference to the authority of the clerk of the superior court to make such notation.

For the filing of said instrument or certificate and making new notations the clerk of the superior court shall be paid a fee of one dollar (\$1.00). (1937, c. 234, ss. 1-4.)

Editor's Note.—It appears that the effect of filing the certificate as provided by this section is to give notice of the inefficacy of the judgment to attach as a lien after the bankruptcy; not to give notice that the judgment is no lien at all, for it may have become a lien before the bankruptcy. 15 N. C. Law Rev., No. 4, p. 336.

Art. 24. Confession of Judgment

§ 623. When and for what.

Applied in *Davis v. Cockman*, 211 N. C. 630, 191 S. E. 322.

§ 624. Debtor to make verified statement.

Section Strictly Construed.—

Where the statutory requirements with respect to the form and contents of the statement have been fully complied with, as in the instant case, the court acquires jurisdiction, and a judgment by confession, as authorized by the debtor in the statement, is valid for all purposes. *Cline v. Cline*, 209 N. C. 531, 535, 183 S. E. 904.

Applied in *Davis v. Cockman*, 211 N. C. 630, 191 S. E. 322.

§ 625. Judgment; execution; installment debt.

Failure to Endorse Judgment on Verified Statement Does Not Affect Validity.—The failure to endorse the judgment on the verified statement was an irregularity which does not affect the validity of the judgment, which the entry on the judgment docket made by the clerk, or under his immediate supervision, shows was rendered by the court. *Cline v. Cline*, 209 N. C. 531, 535, 183 S. E. 904.

Applied in *Davis v. Cockman*, 211 N. C. 630, 191 S. E. 322.

Art. 25. Submission of Controversy without Action

§ 626. Submission, affidavit, and judgment.

Applied in *Powell v. Hood*, 211 N. C. 137, 189 S. E. 483; *Park View Hospital Ass'n v. Peoples Bank, etc.*, Co., 211

N. C. 244, 189 S. E. 766; *St. Louis Union Trust Co. v. Foster*, 211 N. C. 331, 190 S. E. 522; *High Point v. Clark*, 211 N. C. 607, 191 S. E. 318.

Cited in *Swain County v. Welch*, 208 N. C. 439, 181 S. E. 321; *North Carolina Mtg. Corp. v. Morgan*, 208 N. C. 743, 182 S. E. 450; *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6; *Tucker v. Almond*, 209 N. C. 333, 183 S. E. 407; *Daly v. Pate*, 210 N. C. 222, 186 S. E. 348; *Lawrence v. Shaw*, 210 N. C. 352, 186 S. E. 504; *Braak v. Hobbs*, 210 N. C. 379, 186 S. E. 500; *Morrow v. Durham*, 210 N. C. 564, 187 S. E. 752; *Gurganus v. Bullock*, 210 N. C. 670, 188 S. E. 85; *Hardware Mut. Fire Ins. Co. v. Stinson*, 210 N. C. 69, 185 S. E. 449; *Mecklenburg County v. Sterchi Bros. Stores*, 210 N. C. 79, 185 S. E. 454.

Art. 25A. Declaratory Judgments

§ 628(a). Courts of record permitted to enter declaratory judgments of rights, status and other legal relations.

In General.—This article does not extend to the submission of the theoretical problem or a mere abstraction, and it is no part of the function of the courts, in the exercise of the judicial power vested in them by the constitution, to give advisory opinions, or to answer moot questions, or to maintain a legal bureau for those who may chance to be interested, for the time being, in the pursuit of some academic matter. *Allison v. Sharp*, 209 N. C. 477, 481, 184 S. E. 27, citing *Poore v. Poore*, 201 N. C. 791, 161 S. E. 532; *Carolina Power, etc., Co. v. Iseley*, 203 N. C. 811, 167 S. E. 56.

This article affords a means of testing the validity of a statute requiring persons presenting themselves for registration to prove to the satisfaction of the registrar their ability to read or write any section of the Constitution (§ 5939), plaintiffs and all the people of the state being vitally affected by the statute in controversy. *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

But an *ex parte* proceeding to determine petitioner's racial status is not within its scope. *Allison v. Sharp*, 209 N. C. 477, 481, 184 S. E. 27, citing *In re Eubanks*, 202 N. C. 357, 162 S. E. 769.

Applied in *Carr v. Jimmerson*, 210 N. C. 570, 187 S. E. 800.

Cited in *Corl v. Corl*, 209 N. C. 7, 182 S. E. 725.

§ 628(b). Courts given power of construction of all instruments.

See the note to § 628(a) in this Supplement.

§ 628(c). Who may apply for a declaration.

Applied in *Rierson v. Hanson*, 211 N. C. 203, 189 S. E. 502.

§ 628(h). Parties.

See the note to § 628(a) in this Supplement.

SUBCHAPTER IX. APPEAL

Art. 26. Appeal

§ 634. Clerk to transfer issues of fact to civil issue docket.

Section Governs Appeals from Judgment of Clerk in Dower Proceedings.—In dower proceedings issues of law and of fact were raised on the pleadings which had been filed before the clerk. At the hearing of the proceeding by the clerk, the parties waived a trial by jury of the issues of fact, and filed with the clerk a statement on facts agreed. On these facts the clerk rendered a judgment adverse to the plaintiff. The plaintiff excepted to the judgment, and appealed to the Superior Court in term time. It was held that this section and not § 635, was applicable to plaintiff's appeal from the judgment of the clerk of the Superior Court, and there was error in the order of the judge dismissing plaintiff's appeal on his finding that plaintiff had failed to perfect her appeal, as required by § 635. *McLawhorn v. Smith*, 211 N. C. 513, 518, 191 S. E. 35.

§ 635. Duty of clerk on appeal.

See note to the preceding section.

§ 637. Judge determines entire controversy; may recommit.

Quoted in *Sharpe v. Sharpe*, 210 N. C. 92, 185 S. E. 634.

§ 638. Appeal from superior court judge.

II. APPEAL IN GENERAL.

A. General Considerations.

Cited in *State v. Williams*, 209 N. C. 57, 182 S. E. 711.

§ 641. When appeal taken.

Notice of Appeal from Assessment.—Since the docketing of an assessment under § 218(c)(13) has the force and effect of a judgment, notice of appeal from such assessment by a stockholder must be given within the time required by this section. In *re Citizens' Bank*, 209 N. C. 216, 183 S. E. 410.

§ 643. Case on appeal; statement, service, and return.

II. GENERAL CONSIDERATIONS—COUNTER CASE.

Record Imports Verity.—

In accord with original. See *Abernethy v. Burns*, 210 N. C. 636, 188 S. E. 97; *State v. Stiwinter*, 211 N. C. 278, 189 S. E. 868.

Effect of Failure to Serve Counter Case.—

In accord with original. See *Abernethy v. Burns*, 210 N. C. 636, 188 S. E. 97.

No Return of Appellant's Case.—

In accord with original. See *Coral Gables v. Ayres*, 208 N. C. 426, 181 S. E. 263.

III. REQUISITES OF CASE ON APPEAL—EXCEPTIONS.

Concise Statement of Case.—

Although case on appeal was not a concise statement of case it was held that the appeal would be allowed as a dismissal would have been a denial of justice. *Messick v. Hickory*, 211 N. C. 531, 191 S. E. 43.

V. SERVICE OF CASE AND COUNTER-CASE.

A. Necessity and Mode of Service.

Order Allowing Time for Serving Countercase Does Not Affect Rule (Prescribing Time of Appeal).—An order of the superior court enlarging the time for serving statement of case on appeal and exceptions thereto or countercase, does not affect the rules of court prescribing the term to which the appeal must be taken and the time within which the appeal must be docketed. *State v. Moore*, 210 N. C. 459, 187 S. E. 586.

§ 644. Settlement of case on appeal.

Applied in *Messick v. Hickory*, 211 N. C. 531, 191 S. E. 43.

§ 649. Appeals in forma pauperis; clerk's fees.—

Provided, that where the judge of the superior court or the clerk of the superior court has made an order allowing the appellant to appeal as a pauper and the appeal has been filed in the supreme court, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission. (Rev., s. 597; Code, s. 553; 1889, c. 161; 1873-4, c. 60; 1907, c. 878; 1937, c. 89.)

As to the effect of the amendment, see 15 N. C. Law Rev., No. 4, p. 332.

Editor's Note.—The 1937 amendment directed that the above provision be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

Statement of Attorney.—

In accord with original. See *Lupton v. Hawkins*, 210 N. C. 658, 188 S. E. 110.

Defective Affidavit Can Not Be Cured after Five Day Period.—An affidavit which is defective in that it fails to aver that appellant is advised by counsel learned in the law that there is error of law in the judgment may not be cured by an additional affidavit filed after the expiration of the five days prescribed by the statute, or one filed after the date for docketing the appeal. *Berwer v. Union Cent. Life Ins. Co.*, 210 N. C. 814, 188 S. E. 618.

§ 650. Undertaking to stay execution on money judgment.

Effect of Appeal.—Where from an order of the Superior Court requiring plaintiff to pay alimony pendente lite and counsel fees, plaintiff appeals to the Supreme Court and the cause is thereto removed, the Superior Court is thereafter without jurisdiction to order the sale of plaintiff's

land to satisfy the judgment or the execution of a stay bond. *Vaughan v. Vaughan*, 211 N. C. 354, 190 S. E. 492.

§ 654. Docket entry of stay.

Cited in *Queen v. DeHart*, 209 N. C. 414, 184 S. E. 7.

§ 661. Appeal from justice docketed for trial de novo.

Same—Judge Cannot Allow Docketing Later.—Under this section an appeal from justice court must be docketed at that term of the superior court which begins more than ten days after judgment in justice court, and the superior court has no right to dispense with such requirement. *Helsabeck v. Grubbs*, 171 N. C. 337, 88 S. E. 473; *Barnes v. Saleeby*, 177 N. C. 256, 98 S. E. 708. Formerly the rule was different. See *West v. Reynolds*, 94 N. C. 333.

SUBCHAPTER X. EXECUTION

Art. 27. Execution

§ 669. Issued from and returned to court of rendition.

This section and § 711 must be construed in *pari materia* with other statutes relating to the same matter. *Essex Inv. Co. v. Pickelsimer*, 210 N. C. 541, 187 S. E. 813. See §§ 851, 857, 859, and 1608(t).

§ 673. Against the person.

Execution for Conversion.—

Under this section an affirmative answer to an issue establishing that defendant had retained and converted to his own use, in violation of the terms of the contract of assignment with plaintiff, property belonging to plaintiff, is sufficient to support a judgment that execution against the person of defendant issue upon application of plaintiff upon return of execution against the property unsatisfied, intent of defendant in doing the acts constituting a breach of trust being immaterial, and a specific finding of fraud being unnecessary. *East Coast Fertilizer Co. v. Hardee*, 211 N. C. 653, 191 S. E. 725.

§ 678. Sale of trust estates; purchaser's title.

Application to Certain Trusts Only.—

In accord with original. See *Chinnis v. Cobb*, 210 N. C. 104, 185 S. E. 638.

Art. 28. Execution and Judicial Sales

§ 687(b). Minimum notice required in all sales.

Applied in *Little v. Harrison*, 209 N. C. 360, 183 S. E. 293.

§ 690. Sale days; place of sale; ratification of prior sales.—

All sales or resales of real property heretofore made under order of the court or under the power of foreclosure contained in any deed of trust or mortgage on any day other than the first Monday in any month are hereby validated, ratified, and confirmed: Provided, this act shall not affect pending litigation; and provided further, that sales or resales of real property made under the power of foreclosure contained in any deed of trust or mortgage shall not be required to be made on any particular day of the week or month. (Rev., s. 643; Code, s. 454; 1876-7, c. 216, ss. 2, 3; 1883, c. 94, ss. 1, 2; 1931, c. 23; 1937, c. 26.)

Editor's Note.—The 1937 amendment added the above provision at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

Art. 30. Supplemental Proceedings

§ 711. Execution unsatisfied, debtor ordered to answer.

Part of Judgment Owned by Person Other Than Defendant Can Not Be Attached.—In *Armour Fertilizer Works v. Newbern*, 210 N. C. 9, 185 S. E. 471, it was held that at the time of the rendition of a judgment another person was the equitable owner of a stipulated part thereof, so defendant had no legal or equitable interest in such part, and plaintiff was not entitled to attach such part in the supplemental proceedings instituted by it against defendant.

§ 721. Debtor's property ordered sold.**Earnings for Sixty Days.—**

Delete the citation of *Wilmington v. Sprunt*, appearing in the first paragraph under this catchline, and substitute in lieu thereof: 114 N. C. 310, 314.

SUBCHAPTER XI. HOMESTEAD AND EXEMPTIONS**Art. 31. Property Exempt from Execution****§ 729. Conveyed homestead not exempt.**

This section seems to deal with "allotted homesteads." See *Chadbourne Sash, etc., Co. v. Parker*, 153 N. C. 130, 69 S. E. 1; *Cheek v. Walden*, 195 N. C. 752, 143 S. E. 465; *Duplin County v. Harrell*, 195 N. C. 445, 142 S. E. 481; *Equitable Life Assur. Soc. v. Russos*, 210 N. C. 121, 124, 185 S. E. 632.

§ 737. Personal property appraised on demand.**Same—Time of Allotment.—**

In accord with second paragraph in original. See *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

Property from Which Exemption Is Made.—

In accord with original. See *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

Both Creditor and Debtor Are Entitled to Have Procedure Conform to Statute.—In the allotment of the personal property exemption, the creditor as well as the debtor is entitled to have the procedure conform to the constitutional provisions and the statutes enacted pursuant thereto. *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

§ 740. Exceptions to valuation and allotment; procedure.

Applied in *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

§ 751. Forms.

Cited in *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

SUBCHAPTER XII. SPECIAL PROCEEDINGS**Art. 32. Special Proceedings****§ 752. Chapter applicable to special proceedings.**

Abandonment of Proceedings.—By virtue of this section petitioners in condemnation proceedings may abandon the proceedings and take a voluntary nonsuit even after the commissioners have made their appraisal and report and petitioners have filed exceptions thereto, provided petitioners abandon the proceedings before confirmation of the commissioners' report. *Nantahala Power, etc., Co. v. Whiting Mfg. Co.*, 209 N. C. 560, 184 S. E. 48.

§ 753. Contested special proceedings; commencement; summons.

Less Than Ten Days' Notice Given.—A judgment under a service of less than ten days, although irregular, is valid until reversed or vacated by a direct action, and cannot be collaterally attacked. *Nall v. McConnell*, 211 N. C. 258, 261, 190 S. E. 210.

§ 758. Defenses pleaded; transferred to civil issue docket; amendments.**Clerk Must Transfer Case Where Equitable Defense Pleased.—**

In *Smith v. Johnson*, 209 N. C. 729, 184 S. E. 486, it was held that defendant could plead the equitable relief of mutual mistake and when this plea was filed the clerk properly transferred the cause to the civil issue docket.

SUBCHAPTER XIII. PROVISIONAL REMEDIES**Art. 34. Attachment****§ 798. In what actions attachment granted.****Origin of the Writ.—**

In accord with original. See *Chinnis v. Cobb*, 210 N. C. 104, 185 S. E. 638.

Nature and Function.—

In accord with original. See *Chinnis v. Cobb*, 210 N. C. 104, 185 S. E. 638.

Only property which is subject to execution is attachable. *Chinnis v. Cobb*, 210 N. C. 104, 109, 185 S. E. 638, citing *Willis v. Anderson*, 188 N. C. 479, 124 S. E. 834.

Attachment may be levied on land as under execution, and

whatever interest the debtor has subject to execution may be attached, but the debtor must have some beneficial interest in the land. *Chinnis v. Cobb*, 210 N. C. 104, 109, 185 S. E. 638, citing *Willis v. Anderson*, 188 N. C. 479, 124 S. E. 834.

Interest in Land under Spendthrift Trust Not Subject to Attachment.—Plaintiff attached property which had belonged to defendant's mother prior to her death. Thereafter the will was probated which devised the property in trust for defendant under a spendthrift trust. It was held that defendant took nothing as heir at law of her mother, and her interest in the land under the spendthrift trust was not subject to attachment, and the fact that the attachment was attempted to be levied prior to the probate of the will created no lien on the land. *Chinnis v. Cobb*, 210 N. C. 104, 185 S. E. 638.

Applied in *Banner v. Carolina Button Corp.*, 209 N. C. 697, 184 S. E. 508.

§ 815. Defendant's undertaking.**Discharge of Surety.—**

When the surety signs a bond under this section, he enters into the obligation with reference to the cause as it then stands, so when a new element of liability is introduced by an amendment, the surety is discharged. *Rushing v. Ashcraft*, 211 N. C. 627, 629, 191 S. E. 332.

Art. 35. Claim and Delivery**§ 830. Claim for delivery of personal property.**

Cited in *C. I. T. Corp. v. Watkins*, 208 N. C. 448, 181 S. E. 270.

§ 833. Plaintiff's undertaking.

Measure of Damages Where Property Can Not Be Returned.—Where defendant recovers judgment and the property cannot be returned to him, the measure of damages is the value of the property at the time of its seizure, and an instruction that defendant, from whom an automobile had been taken in claim and delivery by the assignor of a chattel mortgage thereon, would be entitled to recover, if plaintiff's seizure of the property were wrongful, the amount paid on the purchase price of the car less the value of the use obtained from the car by defendant, is held error. *C. I. T. Corp. v. Watkins*, 208 N. C. 448, 181 S. E. 270.

Art. 36. Injunction**§ 851. What judges have jurisdiction.**

Appointment of Receiver by County Court.—A general county court is without jurisdiction to appoint a receiver for a judgment debtor having property in another county against whom judgment is rendered in the county court. *Essex Inv. Co. v. Pickelsimer*, 210 N. C. 541, 187 S. E. 813.

§ 858. To restrain collection of taxes.**Illegal or Invalid Tax.—**

Unless otherwise provided by statute, injunction at the instance of a taxpayer is regarded as an appropriate remedy to resist the levy of an invalid assessment, or to restrain the collection of an illegal tax. *Barbee v. Board of Com'rs*, 210 N. C. 717, 719, 188 S. E. 314. See *Reynolds v. Asheville*, 199 N. C. 212, 154 S. E. 85.

Art. 37. Receivers**§ 859. What judge appoints.**

Quoted in *Essex Inv. Co. v. Pickelsimer*, 210 N. C. 541, 187 S. E. 813.

§ 860. In what cases appointed.

The power to appoint a receiver is inherent in a court of equity. The change to the Code did not abridge, but enlarged, it. In *re Penny*, 10 F. Supp. 638, 640.

A receiver will not be appointed where there is a full and adequate remedy at law. In *re Penny*, 10 F. Supp. 638, 640.

Unless Defense of Adequate Remedy at Law Is Waived.

—A simple contract creditor may obtain, in proper cases, equitable relief where answer admits indebtedness and consents to appointment of receiver, waiving the defense of adequate remedy at law. In *re Penny*, 10 F. Supp. 638, 640, citing *Newberry v. Davison Chemical Co.*, 65 F. (2d) 724; *Harkin v. Brundage*, 276 U. S. 36, 51, 48 S. Ct. 268, 72 L. Ed. 457.

Where the debtor and one small creditor agree to have a receiver appointed and to restrain all other creditors from doing anything, a receivership under such circumstances is an agency for the defendant, and the title of

such a receiver to the assets of the bankrupt debtor is merely colorable and he may be required to turn over assets to trustee in bankruptcy. In re Penny, 10 F. Supp. 638, 641.

Exhaustion of Remedy at Law.—

A receiver of defendant's property will not be appointed at the request of a judgment creditor without more being shown where he has the remedy of execution against the property. Scoggins v. Gooch, 211 N. C. 677, 191 S. E. 750.

Before Judgment.—

In order to appoint a receiver before judgment under this section, it must appear that claimant has an apparent right to property which is the subject of the action and the property or the rents are in danger of being lost, Witz v. Gray, 116 N. C. 48, 20 S. E. 1019; Pearce v. Ellwell, 116 N. C. 595, 21 S. E. 305; and it is generally necessary to show that the party in possession is insolvent, Ellington v. Currie, 193 N. C. 610, 137 S. E. 869. In re Penny, 10 F. Supp. 638, 640.

Where an executor's petition to sell lands alleges merely that personality is insufficient to pay debts, plaintiff executor is not entitled to the appointment of a receiver for the lands on the ground that the action cannot be tried until a subsequent term, and that the devisee had refused to pay taxes, the allegation merely that the personality is insufficient failing to show plaintiff executor's apparent right to the relief as required for the appointment of a receiver under the provisions of subsection (1) of this section, especially when the devisee denies the allegation that the personality is insufficient. Neighbors v. Evans, 210 N. C. 550, 187 S. E. 796.

County Court Can Not Appoint Receiver after Judgment Docketed in Superior Court.—After the judgment of a general county court is docketed in the Superior Court of the county the county court has no further jurisdiction of the case and may not thereafter hear a motion for the appointment of a receiver for the judgment debtor. Essex Inv. Co. v. Pickelsimer, 210 N. C. 541, 187 S. E. 813.

§ 861. Appointment refused on bond being given.

Applied in Little v. Wachovia Bank, etc., Co., 208 N. C. 726, 182 S. E. 491.

SUBCHAPTER XIV. ACTIONS IN PARTICULAR CASES

Art. 39. Mandamus

§ 866. Begun by summons and verified complaint.

III. WHEN MANDAMUS WILL LIE.

A. General Rules.

Mandamus will not lie except to enforce a clear legal right against a party under legal obligation to perform the act sought to be enforced. Sovereign Camp, W. O. W. v. Board of Com'rs, 208 N. C. 433, 181 S. E. 339.

§ 867. For money demanded.

The 1933 amendment to this section is constitutional, since it does not impair the obligations of a contract, U. S. Const., Art. 1, sec. 10; N. C. Const., Art. 1, sec. 17, the effect of the statute being merely to alter the method of procedure in which there can be no vested right. Sovereign Camp, W. O. W. v. Board of Com'rs, 208 N. C. 433, 181 S. E. 339.

Necessity for Judgment Prior to Action to Enforce Money Demand.—Where plaintiff alleged ownership of certain county bonds, and sought mandamus to compel the county to levy taxes sufficient to pay same the effect of the action is to enforce a money demand, which can not be maintained under this section as amended by Public Laws 1933, unless the claim has been reduced to judgment. Sovereign Camp, W. O. W. v. Board of Com'rs, 208 N. C. 433, 181 S. E. 339.

Art. 40. Quo Warranto

§ 869. Writs of sci. fa. and quo warranto abolished.

Applied in Stephens v. Dowell, 208 N. C. 555, 181 S. E. 629; Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746.

§ 870. Action by attorney-general.

Determining Title to Public Office.—One of the chief purposes of quo warranto or an information in the nature of quo warranto is to try the title to an office. This is the method prescribed for settling a controversy between rival claimants when one is in possession of the office under a

claim of right and in the exercise of official functions or the performance of official duties; and the jurisdiction of the Superior Court in this behalf has never been abdicated in favor of the board of county canvassers or other officers of an election. Swaringen v. Poplin, 211 N. C. 700, 702, 191 S. E. 746, citing Harkrader v. Lawrence, 190 N. C. 441, 130 S. E. 35.

Quo Warranto Is Not Proper Remedy to Test Validity of Tax.—Quo warranto is the sole remedy to test the validity of an election to public office, but not to test the validity of a tax even though it is levied under the authority of a popular election. Barbee v. Board of Com'rs, 210 N. C. 717, 188 S. E. 314.

§ 871. Action by private person with leave.

Cited in Barbee v. Board of Com'rs, 210 N. C. 717, 188 S. E. 314.

§ 881. Service of summons and complaint.

If the copy of summons left at defendant's residence be not essentially a true copy of the original, then it would be insufficient under the statute, for only by virtue of this section, is substituted service allowable in this way. McLeod v. Pearson, 208 N. C. 539, 540, 181 S. E. 753.

If the copy of summons left at defendant's residence be a true copy of the original, but was neither signed by the clerk nor under seal, it is fatally defective. Id.

SUBCHAPTER XV. INCIDENTAL PROCEDURE IN CIVIL ACTIONS

Art. 43. Compromise

§ 896. Tender of judgment.

Costs—When Taxed on Plaintiff.—Where defendant tenders judgment in its answer for the amount recovered by plaintiff, which tender is refused by plaintiff upon her claim that she is entitled to recover a larger amount, the costs are properly taxed against plaintiff. Webster v. Wachovia Bank, etc., Co., 208 N. C. 759, 182 S. E. 333.

Art. 44. Examination of Parties

§ 899. Action for discovery abolished.

Substitute for Bill of Discovery.—

In accord with original. See McGraw v. Southern Ry. Co., 209 N. C. 432, 184 S. E. 31.

Applied in Enloe v. Charlotte Coca-Cola Bottling Co., 210 N. C. 262, 186 S. E. 242.

Cited in McGraw v. Southern Ry. Co., 209 N. C. 432, 184 S. E. 31.

§ 900. Adverse party examined.

Construction.—

In accord with original. See McGraw v. Southern Ry. Co., 209 N. C. 432, 439, 184 S. E. 31; Douglas v. Buchanan, 211 N. C. 664, 191 S. E. 736.

Substitute for Bill of Discovery.—

In accord with original. See Bohannon v. Wachovia Bank, etc., Co., 210 N. C. 679, 188 S. E. 390; Douglas v. Buchanan, 211 N. C. 664, 191 S. E. 736.

Leave of Court Unnecessary.—

In accord with original. See Douglas v. Buchanan, 211 N. C. 664, 191 S. E. 736.

Right to Cross-Examine Witnesses Is Available Only at Time of Examination.—Where the examination of witnesses prior to trial is had under the provisions of this and the following sections and the testimony elicited from the witnesses read at the trial, the party against whom such evidence is introduced is not entitled as a matter of right to cross-examine such witnesses, although they are present at the trial, the right to object to the competency of the evidence and cross-examine the witnesses being available to the party only at the time the examination of the witnesses is had. McGraw v. Southern Ry. Co., 209 N. C. 432, 184 S. E. 31.

Nonresidence.—

Where an order striking an answer under § 903 was void because of an alternative condition attached the question of whether the court had the power to order the individual defendant, who had moved to another state, to appear under this section is not presented for decision. Hagedorn v. Hagedorn, 210 N. C. 164, 185 S. E. 768.

Appeal from Refusal to Set Aside Order for Examination Is Not Premature.—An appeal from the refusal of the court to set aside an order of the clerk for the examination of an adverse party under this section was held not premature, the appeal presenting the question of whether plaintiff's affidavit upon which the order was made states

facts sufficient to constitute a cause of action. *Bohannon v. Wachovia Bank, etc., Co.*, 210 N. C. 679, 188 S. E. 390.

§ 901. Before trial in his own county.

Examination at Option of Party Claiming.—

In accord with original. See *McGraw v. Southern Ry. Co.*, 209 N. C. 432, 184 S. E. 31.

Cited in *Bohannon v. Wachovia Bank, etc., Co.*, 210 N. C. 679, 188 S. E. 390.

§ 902. Compelling attendance of party for examination before trial.

May Be Read by Either Party.—

In accord with original. See *McGraw v. Southern Ry. Co.*, 209 N. C. 432, 184 S. E. 31.

Entire Examination Must Be Read.—Where a party reads in evidence an examination of an adverse party had under the provisions of § 899 et seq., he must read the whole of the examination, and the admission in evidence of the direct examination of such party while omitting the cross-examination is reversible error. *Enloe v. Charlotte Coca-Cola Bottling Co.*, 210 N. C. 262, 186 S. E. 242.

§ 903. Party's refusal to testify; penalty.

In *Hagedorn v. Hagedorn*, 210 N. C. 164, 165, 185 S. E. 768, the court was precluded from deciding the power to strike out an answer under authority of this section, because of the alternative condition attached to the order, which rendered it void.

§ 904. Rebuttal of party's testimony.

Quoted in *McGraw v. Southern Ry. Co.*, 209 N. C. 432, 184 S. E. 31.

Art. 46. Notices

§ 921. Officer's return evidence of service.

Officer's Return Is Prima Facie Correct.—

In accord with second paragraph of original. See *Penley v. Rader*, 208 N. C. 702, 704, 182 S. E. 337.

Where the sheriff's return was regular upon its face, but each plaintiff testified that service was not made on him, but did not testify as to whether service was made on the other plaintiff, and there was no evidence corroborating plaintiffs' testimony, defendant sheriff's motion for judgment as of nonsuit was properly granted. *Penley v. Rader*, 208 N. C. 702, 182 S. E. 337.

Where the officer's return shows service it is deemed prima facie correct under this section and the remedy of defendant asserting nonservice is by motion in the cause upon a showing of nonservice by clear and unequivocal proof. *Dunn v. Wilson*, 210 N. C. 493, 187 S. E. 802.

CHAPTER 13

CLERK OF SUPERIOR COURT

Art. 1(A). Assistant Clerks

§ 934(a). Appointment; oath; powers and jurisdiction; responsibility of clerks.

While the clerk of the superior court is a constitutional officer, the duties of clerks are prescribed by statute, and the legislature may prescribe that such duties may be performed by assistant clerks as in this and the following sections, and an attack upon the appointment of a guardian by an assistant clerk on the ground that the statute delegating the powers of clerks to assistant clerks is unconstitutional is untenable. In *re Barker*, 210 N. C. 617, 188 S. E. 205.

Art. 3. Powers and Duties

§ 938. Powers enumerated.

Legislature May Take Away or Modify Powers.—The powers and duties of clerks enumerated in this section are given and fixed by legislative enactment, and there is no constitutional barrier to the legislature's taking away, adding to, or modifying them; or authorizing them to be exercised and performed by another. In *re Barker*, 210 N. C. 617, 188 S. E. 205.

Applied in *Braddy v. Praff*, 210 N. C. 248, 186 S. E. 340.

§ 939. Disqualification to act.

Reference.—As to the purpose of the 1935 amendment, see 13 N. C. Law Rev., No. 4, p. 370.

§ 952. To keep books; enumeration.—

4. Cross-index to judgments, which shall contain a direct and reverse alphabetical index of all final judgments in civil actions rendered in the court, with the dates and numbers thereof, and also of all final judgments rendered in other courts and authorized by law to be entered on his judgment docket. Pending the docketing of judgments in the judgment docket and cross-indexing the same as herein provided for, the clerk shall keep a temporary index to all judgments entered in his said court or received in his court from any court for docketing; and he shall immediately index all judgments rendered in his court or received in his court for docketing, and index the names of all parties against whom judgments have been rendered or entered alphabetically in said temporary index, and which temporary index shall be preserved and open to the public until said judgments shall have been docketed in the judgment docket and cross-indexed in the permanent cross-index to judgments, as herein provided for.

(1937, c. 93.)

Editor's Note.—The 1937 amendment added the second sentence of subsection 4. The rest of the section, not being affected by the amendment, is not set out.

By virtue of the amendment, searchers of real property titles may examine the temporary index of judgments and ascertain in advance whether or not judgments have been rendered which, when docketed will affect the title to the realty in which their clients are interested. The new law will thus tend to facilitate real estate loans and transfers. 15 N. C. Law Rev., No. 4, p. 337.

Recording of Verified Report Purports Verity.—Plaintiff, purchaser of the real property at execution sale of a judgment against the devisee, offered in evidence, as proof of payment and that title had vested in the devisee, a special report, duly verified, filed by the executrix stating that the devisee had paid the estate the amount stipulated by the will. This special, verified report of the executrix was a document authorized and required to be recorded, was relevant to the issue, and was competent in evidence, its recording purporting verity and objection to its admission on the ground of hearsay in that it contained a declaration of a person not a party to the action is untenable, the recorded, verified report being more than a mere declaration by the executrix. *Braddy v. Pfaff*, 210 N. C. 248, 186 S. E. 340.

Art. 5. Money in Hand; Investments

§ 961(a). Payment of sum due minor insurance beneficiary.—Where a minor is named as beneficiary in a policy or policies of insurance issued in a sum not exceeding five hundred (\$500.00) dollars, and the insured dies prior to the majority of such beneficiary, any sums due on such policy may be paid to the public guardian or clerk of the superior court of the county wherein such beneficiary resides, to be administered by such clerk or public guardian for the benefit of said minor, and the receipt of the clerk or public guardian in such cases shall be a full and complete discharge of the company or association for any sums due under such policy or policies. (1937, c. 201.)

§ 962(b). Investments prescribed; funds from lands of infants and persons non compos mentis.—

(e) North Carolina county or municipal bonds which are approved by the local government commission.

(1937, c. 188.)

Editor's Note.—The 1937 amendment substituted "local government commission" for "sinking fund commission"

formerly appearing in subsection (c). The rest of the section, not being affected by the amendment, is not set out.

CHAPTER 15 COMMON LAW

§ 970. Common law declared to be in force.

Extent of Common Law.—So much of the common law as is not destructive of, repugnant to, or inconsistent with our form of government, and which has not been repealed or abrogated by statute or become obsolete, is in full force and effect in this jurisdiction. *State v. Hampton*, 210 N. C. 283, 186 S. E. 251.

The solicitation of another to commit a felony is a crime, although the solicitation is of no effect, and the crime is not committed, the common law rule being in effect and controlling. *State v. Hampton*, 210 N. C. 283, 186 S. E. 251.

Cited in dissenting opinion, in *Wachovia Bank, etc., Co. v. Jones*, 210 N. C. 339, 186 S. E. 335.

CHAPTER 17 CONTEMPT

§ 978. Contempts enumerated; common law repealed.

Quoted, in dissenting opinion, in *State v. Perry*, 210 N. C. 796, 188 S. E. 639.

CHAPTER 18 CONTRACTS REQUIRING WRITING

§ 987. Contracts charging representative personalty; promise to answer for debt of another.

Contracts Not within the Statute.—

Where a business run in the name of J. W. J. was in charge of W. P. J., J. W. J.'s son, and J. W. J. being desirous of having goods shipped to W. P. J. permitted them to be shipped in the name of J. W. J. & Son., saying to plaintiff, "you won't lose anything by it," and a payment on account was made by "J. W. J. & Son.," this section was held inapplicable. *Noland Co. v. Jones*, 211 N. C. 462, 190 S. E. 720.

What Determines Nature of Promise.—Whether a promise is an original one not coming within the provisions of this section, or a superadded one barred by the statute, does not depend altogether on the form of expression, but the situation of the parties, and whether they understood the promise to be direct or collateral, should also be considered. *Dozier v. Wood*, 208 N. C. 414, 181 S. E. 336.

Oral Agreement of Stockholders to Be Responsible for Merchandise Held to Be an Original Promise.—Defendants agreed orally to be personally responsible for merchandise shipped to a corporation of which they were the main stockholders, and which they later took over. It was held that the agreement was an original promise not coming within the statute of frauds. *Brown v. Benton*, 209 N. C. 285, 183 S. E. 292.

The Same Being True of Agreement to Furnish Merchandise for Use on Farm.—Evidence of defendant's statements to plaintiff merchant at the time plaintiff agreed to furnish certain merchandise for use on defendant's farm is held susceptible of the interpretation that defendant's promise to pay therefor was an original promise not coming within this section, and not a superadded one barred by the statute, and the question of interpretation should have been submitted to the jury. *Dozier v. Wood*, 208 N. C. 414, 181 S. E. 336.

Question for Jury as to Whether Original Promise Covered Second Transaction.—Where evidence tended to show that defendants ordered two or three cars of lumber, both defendants being present and promising to be personally responsible therefor, and after the first car was shipped, one of defendants went to plaintiff and told him to ship another car under the same arrangements, it was sufficient to be submitted to the jury on the question whether the original promise of both defendants, made when both were present, covered the second car as well as the first. *Brown v. Benton*, 209 N. C. 285, 183 S. E. 292.

§ 988. Contract for sale of land; leases.

I. IN GENERAL.

Rights of Vendee under Parol Contract.—The vendor, in a parol contract to convey land, will not be permitted to evict a vendee who has entered and made improvements, until the latter has been repaid the purchase money and compensated for betterments. *Union Cent. Life Ins. Co. v. Cordon*, 208 N. C. 723, 182 S. E. 496, 497, citing *Vann v. Newsom*, 110 N. C. 122, 14 S. E. 519, and *Eaton v. Doub*, 190 N. C. 14, 22, 128 S. E. 494, 498, 40 A. L. R. 273.

II. WHAT CONSTITUTES AN INTEREST IN OR CONCERNING LAND.

Agreement That Is Not One to Sell or Convey Land.—Where plaintiff alleged that his vendor agreed to procure a release of the land from a prior deed of trust upon the payment by the plaintiff of a note given for the balance of the purchase price of the land, and secured by a deed of trust to his vendor, the agreement is not one to sell or convey land, or any interest in or concerning same, and does not come within the provisions of this section. *Hare v. Hare*, 208 N. C. 442, 181 S. E. 246.

III. SUFFICIENCY OF COMPLIANCE WITH SECTION.

A. In General.

Deed Held to Be a Sufficient Writing.—A deed duly executed and acknowledged and found among the valuable papers of the grantor after his death is a sufficient writing within the meaning of the statute of frauds of a contract of grantor to convey the lands to the grantees in consideration of grantees' taking care of grantor for the remainder of his life. *Austin v. McCollum*, 210 N. C. 817, 188 S. E. 646.

CHAPTER 19 CONVEYANCES

Art. 1. Construction and Sufficiency

§ 991. Fee presumed, though word "heirs" omitted.

Applied in *New York Life Ins. Co. v. Lassiter*, 209 N. C. 156, 160, 183 S. E. 616.

Art. 2. Conveyances by Husband and Wife

§ 997. Instruments affecting married woman's title; husband to execute; privy examination.

II. EXECUTED BY BOTH HUSBAND AND WIFE.

B. Husband's Acknowledgment and Proof Thereof.

It is necessary that a wife's deed be signed by the husband and acknowledged by both husband and wife. *Joiner v. Firemen's Ins. Co.*, 6 F. Supp. 103, 104.

§ 1003. Wife need not join in purchase-money mortgage.

Where Wife of Grantee Acquires No Dower Right.—Where two deeds of trust are executed and substituted for the original purchase money deed of trust, which is canceled, the wife of the grantee acquires no dower right in the land, the original debt for the purchase money not having been extinguished. *Case v. Fitzsimons*, 209 N. C. 783, 184 S. E. 818.

CHAPTER 21 CORPORATION COMMISSION; UTILITIES COMMISSIONER

Art. 3. Powers and Duties

§ 1037(d). Certificate of convenience and necessity.

This section is not applicable to an electric membership corporation, organized under the provisions of § 1694(7-28). And by reason of the provisions of section 1694(28) of the statute under which it was organized, there was no error in the holding of the lower court that the defendant electric membership corporation was not required, before beginning the construction or operation of its facilities for serving its members by furnishing them electricity for lights and power, to obtain from the Utilities Commissioner of North Carolina a certificate that public convenience and necessity requires or will require the construction and operation of said facilities by said defendant.

Carolina Power, etc., Co. v. Johnston County Elec. Membership Corp., 211 N. C. 717, 720.

§ 1042. To provide for union depots.

Cited in *Cole v. Atlantic Coast Line R. Co.*, 211 N. C. 591, 191 S. E. 353.

Art. 5. Railroad Freight Rates

§ 1083. Application for investigation of rates; appeal; rates pending appeal.—

All incorporated cities and towns in the state are deemed to be directly interested in the rates charged for the transportation of property by railroads and other common carriers operating into and out of such municipalities and in any discrimination in such rates and services as between municipalities; and, their welfare being thereby affected, any incorporated city or town in North Carolina is authorized and empowered to file its petition with the utilities commissioner for investigation and determination of all matters affecting rates for the transportation of property by railroads and other common carriers to or from such municipality, and also to prevent or remove any unfair or unreasonable difference or discrimination, to its prejudice or disadvantage, between the rates or the services at, in or to another such municipality within the state; and such municipality shall have the right, as a party in interest, to be represented and appear before, and to appeal from any decision which may be rendered therein by the utilities commissioner, in the manner provided by Consolidated Statutes, section one thousand and ninety-seven. (Ex. Sess., 1913, c. 20, s. 7; 1937, c. 401.)

Editor's Note.—The 1937 amendment directed that the above provision be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

The authority given to municipalities to appear before the utilities commissioner and to appeal from his decisions relates to intrastate rates only, as the commissioner has no authority over interstate rates. 15 N. C. Law Rev., No. 4, p. 366.

Art. 7. Penalties and Actions

§ 1107. Discrimination between connecting lines.

Reference.—As to the practice of specifying in published tariffs particular routes formed with connecting carriers, see 13 N. C. Law Rev., No. 4, p. 364.

§ 1112. Remedies, cumulative.

Cited in *Powell v. Hamlet Ice Co.*, 209 N. C. 195, 183 S. E. 386, dissenting opinion.

Art. 8. Utilities Commissioner

§ 1112(b). Supervisory powers.—

(3) By electric light, power, water, and gas companies, pipe lines originating in North Carolina for the transportation of petroleum products, and corporations, other than such as are municipally owned or conducted, and all other companies, corporations, or individuals engaged in furnishing electricity, electric light current, power, or in transmitting or selling the same or producing the same from the water courses of this state;

(1937, c. 108, s. 2.)

Editor's Note.—The 1937 amendment inserted the reference to pipe lines in subsection (3). The rest of the section, not being affected by the amendment, is not set out.

§ 1112(f1). Transportation advisory commission abolished; powers and duties transferred to utilities commission.—The transportation advisory commission, created under chapter two

hundred sixty-six, Public Laws one thousand nine hundred twenty-five [§ 7516 (e) et seq.], and organized and operating thereunder and by virtue of amendments thereto, is hereby abolished from and after July first, one thousand nine hundred thirty-seven. All the powers and duties heretofore exercised by the said transportation advisory commission are hereby transferred to the utilities commission created by chapter one hundred thirty-four, Public Laws of one thousand nine hundred thirty-three [§ 1112(a) et seq.]; and on and after said July first, one thousand nine hundred thirty-seven, in all proceedings then pending wherein the said transportation advisory commission is petitioner, or plaintiff, or defendant, the said utilities commission shall be petitioner, party plaintiff or party defendant, as the case may be, and shall be empowered and authorized to prosecute same to a conclusion. The said utilities commission is hereby fully clothed with all rights, authority, and powers heretofore vested in the transportation advisory commission under all of the laws creating the said commission, or amending the same, or any other statutes whatsoever. (1937, c. 434, s. 1.)

Editor's Note.—The act from which this section was codified provides for the auditing of all funds of the transportation advisory commission, and turning over any surplus remaining to the state treasurer.

§ 1112(o). Commissioner to keep himself informed as to utilities; approval of rail rate increases without hearing.—

Provided, that in individual cases not involving increases above the normal rate structure, or in individual cases where the proposed increase is deemed justifiable, the utilities commissioner may approve, without hearing, the petitions of carriers where the rate and/or charge involves transportation exclusively by rail; and provided further, that nothing herein shall be construed to prevent any public-service corporation from reducing its rates, either directly or by change in classification. (1933, c. 134, s. 16; 1937, c. 165.)

The 1937 amendment inserted the above provisos in lieu of the proviso formerly appearing at the end of this section. The rest of the section, not being affected by the amendment, is not set out.—Ed. Note.

If this chapter had provided that rates could be decreased without affording the railroad a hearing it would have been unconstitutional. It has been said that the law authorizing the raising of rates without a hearing may be valid, but the question raised, is it good policy? Doubtless convenience is served by dispensing with the necessity for hearings in raising individual rates when no one would be likely to appear with evidence in opposition if there were a hearing. But would not the legitimate objects of the act have been served if authority to raise the rates without a hearing had been specifically qualified by provisions authorizing objections to be made within a given period after the order? 15 N. C. Law Rev., No. 4, p. 365.

The proviso to this section deprived the Utilities Commissioner of jurisdiction over reductions in rates. This means that any railroad acting lawfully, that is, individually and with proper intent, may reduce its own rates free of the control of the Utilities Commissioner, but it does not mean that it can, acting unlawfully or as a result of a conspiracy with other railroads, use this uncontrolled power to injure a competitor and it does not follow that conspiracies in violation of chapter 53 are made legal by the proviso. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 483, 191 S. E. 240, decided prior to the 1937 amendment.

Where certain carriers by truck sought injunctive relief against railroad carriers for reduction in rates as to certain commodities, and as between certain localities, it was held that they had no legal right to have their contract price protected against lawful competition from rail carriers, who could, under this section, reduce rates at will. *Carolina Motor Service v. Atlantic Coast Line R. Co.*, 210

N. C. 36, 185 S. E. 479, 104 A. L. R. 1165, decided prior to the 1937 amendment.

Art. 9. Public Utilities Act of 1933

§ 1112(1). Definitions.

The provisions of this article as to rate regulation are not in conflict with §§ 2559-2574. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

§ 1112(6). Discrimination prohibited.

Where certain carriers by truck sought injunctive relief against railroad carriers for discrimination in rates against certain cities and against certain commodities, it was held that the basis for injunctive relief must be an interference or threatened interference with a legal right of the petitioner, not of a third party and that the shippers would be the real parties in interest not the contract truck carriers. *Carolina Motor Service v. Atlantic Coast Line R. Co.*, 210 N. C. 36, 38, 185 S. E. 479, 104 A. L. R. 1165.

§ 1112(32). Abandonment and reduction of service.

Where a power company discontinued its service for non-payment of charges, the customer, upon payment of the charges, is entitled to restoration of the service where the company did not obtain an order under this section. *Sweetheart Lake v. Carolina Power, etc., Co.*, 211 N. C. 269, 271, 189 S. E. 785.

CHAPTER 22

CORPORATIONS

Art. 2. Formation

§ 1116. When incorporators become corporation.

Applied in *Britt v. Howell*, 210 N. C. 475, 187 S. E. 566.

Art. 3. Powers and Restrictions

§ 1137(a). Process agent in county where principal office located; service on inactive corporations.—Every corporation chartered under the laws of North Carolina shall have an officer or agent in the county where its principal office is located upon whom process can be had, and shall at all times keep on file with the secretary of state the name and address of such process officer or agent, and upon the return of any sheriff or other officer of such county that such corporation or process officer or agent cannot be found, service may be had upon such corporation by leaving a copy with the secretary of state, who shall mail the copy so served upon him to the process agent or officer at the address last given and on file with him, or if none, to the corporation at the address given in its charter; and any such corporation so served shall be in court for all purposes from and after the date of such service on the secretary of state.

For service as above provided to be performed by the secretary of state he shall receive a fee of one dollar (\$1.00), to be paid by the party at whose instance the service is made.

This section shall not be in derogation of any other act or law pertaining to the service of summons or process, but shall be in addition thereto. (1937, c. 133, ss. 1-3.)

For article discussing the effect of this chapter, see 15 N. C. Law Rev., No. 4, p. 340.

§ 1138(a). Certain corporate conveyances validated.—All deeds and conveyances of land in this state, made by any corporation of this state prior to January first, one thousand nine hundred thirty-five, executed in its corporate name and signed and attested by its proper officers, from which the

corporate seal was omitted, shall be good and valid, notwithstanding the failure to attach said corporate seal. This section shall not affect pending litigation. (1937, c. 360, ss. 1, 2.)

Art. 4. Directors and Officers

§ 1144. Directors.—The business of every corporation shall be managed by its directors, who must be at least three in number, and at all times bona fide stockholders or the guardian of a bona fide stockholder, or the executor or administrator of the estate of a deceased bona fide stockholder, or a director in a corporation which is a bona fide stockholder, in case the corporation is one issuing stock.

(1937, c. 179.)

Editor's Note.—The 1937 amendment inserted the words "or the guardian of a bona fide stockholder, or the executor or administrator of the estate of a deceased bona fide stockholder, or a director in a corporation which is a bona fide stockholder" in the first sentence. The rest of the section, not being affected by the amendment, is not set out.

Art. 6. Meetings, Elections and Dividends

§ 1177. Jurisdiction of superior court over corporate elections.—Whenever there shall be any dispute with reference to the election of directors by the stockholders of any corporation in the hands of a receivership, or whenever there shall be any dispute with reference to the election of officers of any corporation by directors or stockholders, if the stockholders elect the officers, the resident or presiding judge of the district may, after ten days' notice to the stockholders, or to the directors as the case may be, hear at chambers, in the county in which the principal office of the corporation is situated, evidence in the form of affidavits as to dispute, and may continue from time to time such hearing for the purpose of establishing facts with reference thereto to his satisfaction; and upon the completion of his hearing may order a new election or may declare the result of the election so held, or may continue the directors or officers, as the case may be, until a new election shall be held: Provided, however, that no order shall be entered temporarily affecting the status of the corporation. With reference to notice, evidence, and the findings by the judge hearing the same, the proceedings shall be, as far as possible, the same as in injunctions. (Rev., s. 1189; 1901, c. 2, s. 47; 1935, c. 413; 1937, c. 347.)

Editor's Note.—Prior to the 1937 amendment this section contained a provision for the appointment of receivers.

Art. 7. Foreign Corporations

§ 1181(b). Secretary of state directed to require domestication of all foreign corporations doing business in state.—The secretary of state is hereby directed to require that every foreign corporation doing business in North Carolina, as permitted under the provisions of Consolidated Statutes, section one thousand one hundred and eighty, shall file in the office of the secretary of state a copy of its charter or articles of agreement, in the manner required by Consolidated Statutes, section one thousand one hundred and eighty-one, and all amendments thereto, and otherwise fully comply with the provisions of said law, including the payment to the secretary of state of fees fixed by said law for the privilege of doing business in this state and domestication therein. The secre-

tary of state is authorized and empowered to employ such assistants as shall be deemed necessary in his office for the purpose of carrying out and enforcing the provisions of this section, and for making such investigations as shall be necessary to ascertain foreign corporations now doing business in North Carolina which may have failed or hereafter fail to domesticate as required by law. (1937, c. 343.)

Art. 8. Dissolution

§ 1197. Wages for two months lien on assets.—In case of the insolvency of a corporation, partnership or individual, all persons doing labor or service of whatever character in its regular employment have a lien upon the assets thereof for the amount of wages due to them for all labor, work, and services rendered within two months next preceding the date when proceedings in insolvency were actually instituted and begun against the corporation, partnership or individual, which lien is prior to all other liens that can be acquired against such assets. (Rev., s. 1206; 1901, c. 2, s. 87; 1937, c. 223.)

Editor's Note.—The 1937 amendment inserted the words "partnership or individual" twice in this section.

§ 1199. Debts not extinguished nor actions abated.

Where a corporation has been served with summons and has filed answer, the action against it does not abate upon its subsequent dissolution, and its directors are made trustees of its property by §§ 1193 and 1194. *Lertz v. Hughes Bros.*, 208 N. C. 490, 181 S. E. 342.

Art. 10. Receivers

§ 1212. Proof of claims; time limit.

Cited in *Kenny Co. v. Hinton Hotel Co.*, 208 N. C. 295, 180 S. E. 696.

Art. 11. Taxes and Fees

§ 1218. Taxes for filing; secretary of state not to file corporate papers until prescribed fees, etc., paid.—

The secretary of state shall not file any articles, certificates, applications, amendments, reports, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter until all fees, taxes, and charges provided to be paid in connection therewith shall have been paid to him. (Rev., s. 1233; 1901, c. 2, s. 96; 1911, c. 155, s. 5; 1929, c. 36; 1935, c. 10; 1937, c. 171.)

Editor's Note.—The 1937 amendment directed that the above provision be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

§ 1220. Corporate property in receiver's hands liable for taxes.

Where City and County Have No Lien on Proceeds of Sale.—Where the receiver of a corporation sold personal property of the corporation, comprising its sole assets, under orders of the court, and deposited the proceeds of sale to his credit as receiver, and the city and county in which the corporation was located levied executions on the funds on deposit, claiming that they, respectively, were entitled to preferred claims against the funds for personal property taxes for several years prior to the appointment of the receiver, it was held that since under § 7986 a lien for personal property taxes does not attach until levy thereon and no lien for taxes was created prior to the sale of the property free from tax liens by the receiver, the city and county have no lien on the proceeds of sale of the property and are not entitled to a preferred claim against the funds. *Currie v. Southern Manufacturers Club*, 210 N. C. 150, 185 S. E. 666.

Art. 14. Severance of Certain Partially Merged Charitable, Educational or Social Corporations

§ 1224(j). Application of article.—This article shall apply only to charitable, educational or social corporation, not under the patronage or control of the state nor under the patronage or control of any religious denomination, which has been formed by the de jure merger of two or more corporations of such character, the merger having been brought about either under chapter four hundred eight of the Public Laws of one thousand nine hundred thirty-three or chapter seventy-seven of the Public Laws of one thousand nine hundred twenty-five [§§ 1224(a)-1224(i)], or under other special or general laws, but where for any reason the merger has not been carried out in fact to the extent of the actual surrender of shares of stock or of other evidences of membership in the respective corporations and the issuance of new stock or new evidences of membership in the merged corporation. A charitable, educational or social corporation, organized by the merger of two such corporations, may be severed and restored to the status of the merging or original corporations by complying with the provisions of this article, with the exceptions above set out. (1937, c. 256, s. 1.)

§ 1224(k). Resolution providing for severance; accounting.—At any regular or duly called meeting of the board of directors or other governing body of such merged corporation, a resolution may be adopted providing for the severance of the corporations and restoration to each of the original corporations of the properties owned by each at the time of the merger, and the restoration to the stockholders or members of the stock, rights and privileges owned by them in the merging corporations at the time of the merger, and providing for an accounting as between the respective corporations of their receipts, disbursements and obligations incurred since the attempted merger, the accounting to be on the assumption the corporations had never been merged. (1937, c. 256, s. 2.)

§ 1224(l). Stockholders' meeting; notice; ratification of resolution.—Upon the adoption by the board of directors or other governing body of the merged corporations of such resolution of severance, a meeting shall be called by the said governing body of the members or stockholders of the merged corporation. A notice shall be sent to each stockholder or member of the merged corporation by registered mail at least ten days before the date of the stockholders' or members' meeting. Such notice shall be mailed to the last address of the stockholder or member as it appears on the records of the merged corporation. Such notice shall also be published once in a newspaper of general circulation in the county in which the corporation has its principal office at least ten days before the meeting, stating the substance of the resolution of severance and giving the time and place of the meeting. If at such meeting of stockholders or members a resolution shall be adopted ratifying the resolution of the board of directors or governing body, and providing for the severance of the merged corporation into its constituent corporations as they existed

immediately prior to the merger, and such resolution shall be adopted by a majority of three-fourths of the total membership or total number of stockholders by shares, as the voting privilege may be exercised in the merged corporation, then the merged corporation shall be severed, on compliance with the further procedural provisions of this article. (1937, c. 256, s. 3.)

§ 1224(m). Election of officers for severed corporations.—On the adoption of such resolution of severance by the stockholders or members, the president of the merged corporation shall, either at said meeting or within ten days thereafter, appoint an acting chairman of the membership or stockholders of each corporation, and shall call a meeting of the members or stockholders of each corporation for the purpose of electing officers of each of the severed corporations, such meetings to be held in accordance with the charter and by-laws of the severed corporations as they existed prior to the merger. (1937, c. 256, s. 4.)

§ 1224(n). Agreement between officers and directors for division and accounting.—The officers and directors of the several corporations shall thereupon enter into an agreement setting out in substantial detail the division of the properties of the merged corporation and providing for the accounting of all receipts and disbursements as between the severed corporations on the same basis as if the respective corporations had never been merged. Such agreement shall thereupon be submitted to the stockholders or members of the severed corporations at a meeting to be called in accordance with the charter or by-laws of the severed corporations. At such meeting such agreement shall become effective when approved by a majority of the stockholders or members. Thereupon said agreement shall be executed by the respective officers of the severed corporations, and deeds and other appropriate instruments shall be executed by the officers of the respective corporations to carry out the terms of the agreement. (1937, c. 256, s. 5.)

§ 1224(o). Certificates of severance.—Upon the approval of the terms of the severance agreement, as provided in the preceding section, the president and board of directors of the respective corporations shall execute a certificate under the seal of the corporation setting forth in substance the terms of the resolution of severance adopted by the stockholders or members of the merged corporation provided for by section 1224(l), and also setting forth the fact and date of the ratification of such severance agreement by the majority of the members or stockholders of the severed corporations, and shall file the same with the secretary of the state of North Carolina. Such certificate, duly certified by the secretary of state under the seal of his office, shall also be recorded in the office of the clerk of the superior court of the county in this state in which the principal office of the merged corporation was established, and also in the offices of the clerks of the superior court for each of the counties in which the respective severed corporations shall have or shall establish their principal offices. On the filing of such certificates in the office of the clerk or clerks of the superior courts, as herein provided, said severance shall be complete to all

intents and purposes as if the merger had never taken place. Upon the recording of such certificate it shall be presumptive evidence of the statements of fact contained in said certificate, and after sixty days it shall be conclusive evidence of such statements of fact, except as to any stockholder or member who shall have demanded the value of his stock or membership. (1937, c. 256, s. 6.)

§ 1224(p). Original rights restored; liabilities unaffected.—On the completion of the procedure set out in the previous section the stockholders or members in the respective corporations, or their representatives or assigns, as the case may be, shall to all intents and purposes be restored to the same rights and privileges which they, or their predecessors in interest, held in the original corporations: Provided, that any member or stockholder who has conveyed or for any reason forfeited his rights in the merged corporation shall not, by reason of the severance of the merged corporations, be restored to the rights he had in the original corporations at the time of the merger. Nothing contained in this article, however, shall be deemed to affect any debts, liabilities or obligations assumed or incurred by the merged corporation during the period of the merger, but each of the severed corporations shall, with respect to such debts or other obligations, remain liable jointly and severally. (1937, c. 256, s. 7.)

§ 1224(q). Objection to severance and demand for payment for stock; failure to object deemed assent.—If any stockholder or member entitled to vote in the merged corporation shall vote against the merger at the stockholders' or members' meeting provided in section 1224(l), or shall, prior to the taking of the vote at such meeting, object thereto in writing, and if such dissenting or objecting stockholder or member shall, within twenty days after such meeting, demand in writing from the merged corporation payment of his stock or of his interest in the merged corporation by reason of his membership therein, the merged corporation shall, within thirty days thereafter, pay to him the value of his stock or membership at the date of the adoption of the resolution of severance at the stockholders' or members' meeting. In case of disagreement as to the value thereof, it shall be lawful for any such stockholder or member, within thirty days after he has made demand in writing as aforesaid, or has voted against the resolution as aforesaid, and upon written notice to the merged corporation to appeal by petition to the superior court of the county in which the principal office of the merged corporation is located to appoint three appraisers to appraise the value of his stock or membership. The award of the appraisers, or a majority of them, if not opposed within ten days after the same shall have been filed in court, shall be confirmed by the court or clerk, and when confirmed shall be final and conclusive. If such report is opposed and excepted to, the exceptions shall be transferred to the civil issue docket of the superior court, and there tried in the same manner, as nearly as may be practicable, as is provided in section one thousand seven hundred and twenty-four of the Consolidated Statutes for the trial of exceptions to

the appraisal of land condemned for public purposes. The court shall assess against the merged corporation the costs of said proceeding. On the making of such demand in writing, as aforesaid, any such stockholder or member shall cease to be a stockholder or member in said merged corporation, and shall have no rights with respect thereto, except the right to receive payment for the value of his stock or membership. Each stockholder or member in the merged corporation entitled to vote, who does not vote against the severance, and each stockholder or member at the time of the adoption of the resolution of severance provided in section 1224(l) not entitled to vote, who does not object thereto in writing, as aforesaid, shall be deemed to have assented to the severance. (1937, c. 256, s. 8.)

§ 1224(r). Pending litigation not affected.—Any action or proceeding pending by or against the merged corporation may be prosecuted to judgment as if such severance had not taken place, or the severed corporation, or either of them, may be substituted in its place. (1937, c. 256, s. 9.)

§ 1224(s). Fees of secretary of state.—The fees to be charged by the secretary of state for filing the certificate of severance and the issuance of his certificate thereon shall be the same as provided by law for the filing of an original certificate of incorporation of charitable, educational or social corporations. (1937, c. 256, s. 10.)

CHAPTER 23

COSTS

Art. 1. Generally

§ 1229(a). Stenographer's fee in Wayne County.

Editor's Note.—Public Laws 1937, c. 120, amended this section by adding the following sub-sections:

(a) The stenographer's fee in all actions and special proceedings, now pending, or hereafter brought in the superior court of Wayne county and the county court of Wayne county shall be five (\$5.00) dollars: Provided, however, that such stenographer's fee shall not be taxed in any action or proceeding unless a jury shall be empaneled and evidence shall be offered: Provided further, that such fee shall not be taxed in any action in the county court unless the services of a court stenographer shall be employed.

(b) The jury fee in all civil actions or special proceedings, now pending, or hereafter brought in the superior court of Wayne county or in the county court of Wayne county shall be three (\$3.00) dollars: Provided, however, that such jury fee shall not be taxed in any action or proceeding unless a jury shall be empaneled and evidence shall be offered.

(c) The jury fee in all criminal actions, now pending, or hereafter brought in the superior court of Wayne county or in the county court of Wayne county, shall be four (\$4.00) dollars: Provided, however, that such jury fee shall not be taxed in any action in the county court of Wayne county unless a jury shall be empaneled.

Art. 3. Civil Actions and Proceedings

§ 1241. Costs allowed plaintiff; limited by recovery; several suits on one instrument.

V. NO MORE RECOVERY OF COSTS THAN DAMAGES.

Applied, as to action of slander, in *Wolfe v. Montgomery Ward & Co.*, 211 N. C. 295, 189 S. E. 772.

§ 1244. Costs allowed either party or apportioned in discretion of court; attorneys' fees.—

The word "costs" as the same appears and is used in this section shall be construed to include

reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow. (Rev., s. 1268; Code, ss. 2134, 2161, 1660, 1294, 2039, 2056, 533, 1422, 1323; 1889, c. 37; 1893, c. 149, s. 6; 1937, c. 143.)

Editor's Note.—The 1937 amendment, which added the above paragraph at the end of this section, provides: "This act shall not apply to pending causes." The rest of the section, not being affected by the amendment, is not set out here.

For article discussing the effect of the amendment, see 15 N. C. Law Rev., No. 4, p. 333.

Art. 5. Liability of Counties in Criminal Actions

§ 1260. Local modification as to counties paying costs.

In Northampton county where in criminal proceedings before the recorder's court, the grand jury, or superior court the defendant is found not guilty or a true bill is not found by the grand jury, or the defendant is found guilty and is sentenced by the court to serve on the roads or a term in jail, then the said county shall pay full fees to the sheriff, officer, or constable who served any process in such proceeding. (1937, c. 43.)

Editor's Note.—Public Acts 1937, c. 43, directed that the above paragraph be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

CHAPTER 24

COUNTIES AND COUNTY COMMISSIONERS

Art. 1. Corporate Existence and Powers of Counties

§ 1290. County as corporation; acts through commissioners.

Same—Differs from Cities and Towns.—In accord with original. See *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777.

§ 1291(b). Reconveyance of property donated to county, etc., for specific purpose.—Any county, city or town to which any real property has been conveyed, without consideration, to be used for a specific purpose set out in the deed, shall have authority to reconvey the same without consideration to the grantor, his heirs, assigns or nominees whenever the governing body of such municipality shall officially determine that the said property will not be used for the purpose for which it was given: Provided, that due notice of such proposed conveyance shall be given by advertisement for two successive weeks in some newspaper of general circulation in the county. (1937, c. 441.)

Art. 2. County Commissioners

§ 1293. Local modifications as to term and number.

Cited in *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777.

§ 1297. Powers of board.

8¾. Same—In Certain Counties.—Subject to the approval of the director of local government, the boards of county commissioners of Duplin, Avery, Dare, Tyrrell, Pender, Clay, Alleghany, Cherokee, Edgecombe, Graham, Granville, Halifax, Iredell, Jackson, Macon, Montgomery, Person, Polk, Rutherford, Swain, Watauga, Wilson, Durham, Mitchell, Burke, McDowell, Perquimans, Alamance, Henderson, Buncombe, Randolph and Scotland

counties are hereby authorized to levy such special property taxes as may be necessary not to exceed five cents on the one hundred dollars valuation for the following special purposes respectively, in addition to any tax now allowed by law for such purposes and in addition to the rate allowed by the constitution: (1) For the expense of the quadrennial valuation or assessment of the taxable property, (2) for the expense of holding courts in the county levying the tax and the expense of maintenance of jails and jail prisoners. (1931, c. 441; 1935, c. 330; 1937, c. 41.)

Editor's Note.—The 1937 amendment added Buncombe and Randolph to the list of counties in this subsection. The rest of the section, not being affected by the amendment, is not set out here.

Issuance of Bonds for Erection of New Jail Authorized.—Where it was stipulated in the agreed facts that defendant county's jail was unsafe and insanitary, and the erection of a new jail was a public necessity, bonds necessary to provide funds for the erection of a new jail, with plumbing, heating, and electrical work, are for a special necessary county expense under this section and § 1317, therefore the issuance of such bonds is given special legislative approval by §§ 1321(a), 1334(8) (a) and (d). Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3.

The board of commissioners has the power and duty of auditing and passing upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. If after a hearing they refuse to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Reed v. Farmer, 211 N. C. 249, 253, 189 S. E. 882, citing Martin v. Clark, 135 N. C. 178, 47 S. E. 397.

Art. 5A. Contracts

§ 1316(a). Contracts involving expenditure of \$1,000 or more let after advertisement for bids.

Excessive Deposit Does Not Invalidate Bond.—The fact that the city required a deposit in excess of the amount required by this section does not invalidate the bond. Northeastern Const. Co. v. Winston-Salem, 83 F. (2d) 57, 61, 104 A. L. R. 1142.

Where Contract of City Manager Was Not Binding.—Where the proposal of the city was materially changed before the bid of the construction company was accepted, neither the bidder nor its surety consenting to the change, and where there was no authority on the part of the city manager of public works to make the contract or direct any change until after a contract was entered into, the holding of the court that there was a binding contract was held to be erroneous. Northeastern Const. Co. v. Winston-Salem, 83 F. (2d) 57, 61, 104 A. L. R. 1142.

Authority of Commissioner of Public Works to Change Specifications Does Not Give Engineer Any Power until Binding Contract Is Executed.—A clause in the specifications accompanying the advertisement for the bids giving the commissioner of public works the power, at any time, to make changes in the specifications as to the work and make variations in the quantity of the work either before the commencement of the work or during its progress does not give the engineer any power over the transaction until a binding contract is executed and entered into, and in no sense gives him any power or authority as a contracting party. Northeastern Const. Co. v. Winston-Salem, 83 F. (2d) 57, 60, 104 A. L. R. 1142.

Art. 6. Courthouse and Jail Buildings

§ 1317. Built and repaired by commissioners.

Reference.—See the note to § 1297 of this Supplement. The duty to make proper rules and regulations imposes a discretionary duty on the board of commissioners exercisable only in its corporate capacity, and the commissioners are not liable as individuals unless they corruptly or with malice fail to make proper rules and regulations. Moye v. McLawhorn, 208 N. C. 812, 182 S. E. 493.

§ 1321(a). Bonds for building, altering and repairing courthouses; issuance authorized.

Issuance of Bonds for Erection of New Jail Held to Be Authorized.—Where the defendant county's jail was unsafe and insanitary, and the erection of a new one was a pub-

lic necessity, the issuance of bonds for this purpose was held to have been given special legislative approval by this section and § 1334(8) (a) and (d). Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3. See §§ 1297 and 1317 of this Supplement.

The taxes necessary to pay principal and interest of such bond issue by the county held not to be subject to the limitations of N. C. Const., Art. V, § 6, Art. VII, § 7. Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3.

Art. 7. County Revenue

§ 1330. Demand before suit against municipality; complaint.

Purpose of Section.—The purpose of this section was to give the municipality an opportunity to pass upon and pay a claim involving a money demand before it could be subjected to the burden and expense of litigation. It manifestly has no application to suits in equity the object of which is to protect and preserve the rights of complainant as against threatened action by the city or its officers. George v. Asheville, 80 F. (2d) 50, 53, 103 A. L. R. 568.

Art. 7A. County Finance Act

§ 1334(8). Purposes for which bonds may be issued and taxes levied.

References.—See §§ 1297, 1317, and 1321(a) of this Supplement and notes thereto.

Refunding Bonds May Be Issued without Submitting Question to Qualified Voters.—Reasonable and necessary expenses incurred in good faith to effect a refunding of county indebtedness authorized by this section held to be a necessary expense of the county, and bonds may be issued therefor without submitting the question to the qualified voters of the county. Morrow v. Board of Com'rs, 210 N. C. 564, 187 S. E. 752.

Section Does Not Include Teacherage as Necessary Equipment of School.—To hold as a matter of law that a teacherage is a part of the necessary equipment of a rural consolidated school would be to go farther than the General Assembly has gone, and, perhaps, entail some judicial engrainment. This section is not fraught with any dubiety of meaning. A teacherage, which is to be run for profit and solely for the benefit of the teachers, is not included within its terms. Denny v. Mecklenburg County, 211 N. C. 558, 559, 191 S. E. 26.

§ 1334(17). Hearing; passage of order; debt limitations.

Where a county has assumed all indebtedness of its political subdivisions for school purposes, and a proposed bond issue to provide funds necessary to the maintenance of the constitutional school term in the county is within the limitations of this section, and comes within the provisions of the Emergency Bond Act, § 1334(86) et seq., taxes for the payment of principal and interest of the proposed bond issue will not be subject to any limitation on the tax rate. Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3.

Art. 7C. County Fiscal Control

§ 1334(70). Daily deposits by collecting or receiving officers.

Applied in Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33.

Art. 7F. Emergency County Bond Act

§ 1334(92). Taxes levied for the payment of the bonds.

See § 1334(17) of this Supplement and note thereto.

§ 1334(96). Application and construction of law.

A county may issue its bonds for a necessary special purpose with the special approval of the General Assembly, or to raise funds necessary to the maintenance of the constitutional school term, without submitting the issuance of the bonds to a vote, notwithstanding the provisions of a special statute requiring a vote, when the purpose of the bond issue is to provide the county's part of the expense of a project for which a federal grant is available, and the proposed bond issue comes within the provisions of this article, the special act being harmonized with this article to effectuate the legislative intent. Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3.

Art. 8. County Poor

§ 1335. Support of poor; superintendent of county home; paupers removing to county; hospital treatment.

Tax Is Not Subject to Limitation on Tax Rate Imposed by Constitution.—The tax contemplated is for a special, necessary purpose, with special approval of the General Assembly, and is not, therefore, subject to the limitation on the tax rate imposed by Art. V, sec. 6 of the Constitution. *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777.

Tax for Medical Care May Be Levied without Approval of the Qualified Voters.—The tax to provide funds necessary for the medical care and hospitalization of the indigent sick of a county is for a necessary expense of the county, and may be levied without the approval of the qualified voters of the county. *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777. See Art. VII, sec. 7 of the Constitution.

Contract Not Held Invalid Because of Duration.—Where the General Assembly has authorized a county to enter into a contract with a public hospital for the care of its indigent sick for a period of thirty years, and the board of commissioners of the county, in the exercise of the discretion vested in the board by the statute, has agreed to contract for that period, the contract will not be held invalid because of its duration. *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777.

Art. 9. County Prisoners

§ 1364(1). Use of county prisoners in maintaining roads, not within state system.—The state highway and public works commission may, on official request from a board of county commissioners authorize such board of county commissioners to use any county prisoners, upon such terms as may be agreed upon, to maintain and grade any neighborhood road within the county not at such time within the system of the state highway commission, but this authorization shall not authorize the levying of any tax for support of local roads; and like authority is extended to the boards of drainage commissioners for public drainage districts for the maintenance and upkeep of such districts. (1937, c. 297, s. 3½.)

CHAPTER 26

COUNTY TREASURER

§ 1387. Election of county treasurer.

Editor's Note.—Public Laws 1937, c. 103, abolished the office of treasurer in Buncombe county and transferred its functions and duties to the county accountant.

CHAPTER 27

COURTS

SUBCHAPTER I. SUPREME COURT

Art. 1. Organization and Terms

§ 1403. Number of justices.—The supreme court of North Carolina shall consist of a chief justice and six associate justices, to be chosen in the manner now prescribed by law. (Rev., s. 1532; Const., Art. 4, s. 6; 1937, c. 16, s. 1.)

Editor's Note.—The 1937 amendment increased the associate justices from four to six.

§ 1407. Quorum.—Four justices shall constitute a quorum for the transaction of the business of the court. (Rev., s. 1534; Code, s. 956; 1889, c. 230; 1937, c. 16, s. 2.)

Editor's Note.—Prior to the 1937 amendment three justices constituted a quorum.

Art. 2. Jurisdiction

§ 1412. Power to render judgment and issue execution.

I. IN GENERAL.

Errors Which Have to Be Assigned.—

In accord with original. See *In re Will of Roediger*, 209 N. C. 470, 184 S. E. 74.

§ 1421. Power to make rules of court.

Cited in *In re Will of Roediger*, 209 N. C. 470, 184 S. E. 74.

Art. 3. Officers of Court

§ 1428. Librarian and assistant appointed.—The justices of the supreme court have charge of the law library and may, in their discretion, employ a librarian and an assistant librarian, who shall perform their duties under such rules and regulations as may be prescribed by the court. (Rev., s. 5084; Code, s. 3606; 1889, c. 482; 1883, c. 100; 1937, c. 173.)

Editor's Note.—The 1937 amendment authorized the appointment of an assistant librarian.

SUBCHAPTER II. SUPERIOR COURTS

Art. 4. Organization

§ 1435(d). Governor to make appointment of four special judges.—The governor of North Carolina may appoint four persons who shall possess the requirements and qualifications of special judges as prescribed by article four, section eleven of the constitution, and who shall take the same oath of office and otherwise be subject to the same requirements and disabilities as are or may be prescribed by law for judges of the superior court, save the requirements of residence in a particular district, to be special judges of the superior courts of the state of North Carolina. Two of the said judges shall be appointed from the western judicial division and two from the eastern judicial division, as now established. The governor shall issue a commission to each of said judges so appointed for a term to begin July first, nineteen hundred thirty-seven, and to end June thirtieth, nineteen hundred thirty-nine, and the said commission shall constitute his authority to perform the duties of the office of a special judge of the superior courts during the time named therein. (1927, c. 206, s. 1; 1929, c. 137, s. 1; 1931, c. 29, s. 1; 1933, c. 217, s. 1; 1935, c. 97, s. 1; 1937, c. 72, s. 1.)

Editor's Note.—The 1937 amendment reenacted sections 1435(d)-1435(k) without change except as to dates.

§ 1435(e). Time for appointment.—Each special judge shall be appointed by the governor on or before July first, nineteen hundred thirty-seven, and shall be subject to removal from office for the same causes and in the same manner as regular judges of the superior court; and vacancies occurring in the offices created by this act shall be filled by the governor in like manner for the unexpired term thereof. (1927, c. 206, s. 2; 1929, c. 137, s. 2; 1931, c. 29, s. 2; 1933, c. 217, s. 2; 1935, c. 97, s. 2; 1937, c. 72, s. 2.)

§ 1435(f). Further appointments.—The governor is further authorized and empowered, if in his judgment the necessity exists therefor, to appoint at such time as he may determine, not exceeding two additional judges, one of whom shall be a resident of the eastern judicial division and one of whom shall be a resident of the western judicial division, whose term of office shall begin from his

or their appointment and qualification and to end June thirtieth, nineteen hundred thirty-nine. All the provisions of this act applicable to the four special judges directed and appointed shall be applicable to the two special judges authorized to be appointed under this section. (1927, c. 206, s. 3; 1929, c. 137, s. 3; 1931, c. 29, s. 3; 1933, c. 217, s. 3; 1935, c. 97, s. 3; 1937, c. 72, s. 3.)

§ 1435(g). Extent of authority.—The authority herein pursuant to article four, section eleven, of the constitution of North Carolina, conferred upon the governor to appoint such special judges shall extend to regular as well as special terms of the superior court, with either civil or criminal jurisdiction, or both, as may be designated by the statutes or by the governor pursuant to law. (1927, c. 206, s. 4; 1929, c. 137, s. 4; 1931, c. 29, s. 4; 1933, c. 217, s. 4; 1935, c. 97, s. 4; 1937, c. 72, s. 4.)

§ 1435(h). Jurisdiction as of regular judges.—Such special judges during the time noted in their commission shall have all the jurisdiction which is now or may be hereafter lawfully exercised by the regular judges of the superior courts in the courts which they are appointed or assigned by the governor to hold, and shall have power to determine all matters and injunctions, receiverships, motions, habeas corpus proceedings and special proceedings or an appeal otherwise properly before them; but writs of injunction, orders to show cause, and other remedial or amendatory writs, orders and notices shall be returnable before them only in the county where the suit, proceeding or other cause is pending unless such judge is then holding the courts of that district, in which case the same may be returnable before him as before the regular judge of the superior court; and the same, when issued by any such special judge, may always be made returnable by him before the resident or presiding superior court judge of each district to the same extent and in the same manner as any superior court judge might do in like case. (1927, c. 206, s. 5; 1929, c. 137, s. 5; 1931, c. 29, s. 5; 1933, c. 217, s. 5; 1935, c. 97, s. 5; 1937, c. 72, s. 5.)

§ 1435(i). Salary; expenses; terms; practice of law.—The special judges so appointed shall receive the same salary and traveling expenses as now are, or may hereafter be, paid or allowed to judges of the superior court for holding their regularly assigned courts, and they shall hold all such regular and special terms of court as they may be directed and assigned by the governor to hold, without additional compensation: Provided, that no person appointed under this act shall engage in the private practice of law. (1927, c. 206, s. 6; 1929, c. 137, s. 6; 1931, c. 29, s. 6; 1933, c. 217, s. 6; 1935, c. 97, s. 6; 1937, c. 72, s. 6.)

§ 1435(j). Authority to settle case on appeal.—Nothing herein shall be construed to prohibit such special judges from settling cases on appeal and making all proper orders in regard thereto after the time for which they were commissioned has expired. (1927, c. 206, s. 7; 1929, c. 137, s. 7; 1931, c. 29, s. 7; 1933, c. 217, s. 7; 1935, c. 97, s. 7; 1937, c. 72, s. 7.)

§ 1435(k). Conflicting law repealed.—All laws and clauses of laws which may be in conflict with

the seven preceding sections, to the extent of such conflict, are hereby repealed: Provided, that nothing herein shall in any manner affect sections 1435(a) and 3884(a) of the Consolidated Statutes. (1929, c. 137, s. 8; 1931, c. 29, s. 8; 1931, c. 217, s. 8; 1935, c. 97, s. 8; 1937, c. 72, s. 8.)

Art. 5. Jurisdiction

§ 1436. Original jurisdiction.

I. IN GENERAL.

Applied in *Bryan v. Street*, 209 N. C. 284, 183 S. E. 366.

Art. 6. Judicial Districts and Terms of Court

§ 1441. Number of districts.—The state shall be divided into twenty-one superior court judicial districts, numbered first to twenty-first, composed of the counties hereafter designated. (1913, c. 63; 1913, c. 196; 1937, c. 413, s. 1.)

Editor's Note.—Prior to the 1937 amendment there were twenty districts.

§ 1442. Eastern and western judicial divisions.—The state shall be divided into two judicial divisions, the Eastern and Western Judicial Divisions. The counties which are now or may hereafter be included in the judicial districts from one to ten, both inclusive, shall constitute the Eastern Division, and the counties which are now or may hereafter be included in the judicial districts from eleven to twenty-one, both inclusive, shall constitute the Western Division. The judicial districts shall retain their numbers from one up to twenty-one, and all such other districts as may from time to time be added by the creation of new districts shall be numbered consecutively. (1915, c. 15; 1937, c. 413, s. 2.)

Editor's Note.—The 1937 amendment substituted "twenty-one" for "twenty" formerly appearing in this section.

§ 1443. Terms of court.—A superior court shall be held by a judge thereof at the courthouse in each county. The twenty judicial districts of the state shall be composed of the counties designated in this section, and the superior courts in the several counties shall be opened and held in each year at the times herein set forth. Each court shall continue in session one week, and be for the trial of criminal and civil cases, except as otherwise provided, unless the business thereof shall be sooner disposed of. Each county shall have the number of regular weeks of superior court as set out in this section: Provided, however, that the schedule of courts of any county or judicial district may be revised or reformed and the number of terms of court may be increased or decreased from time to time as may appear advisable to the court calendar commission; which said commission shall be composed of the chief justice of the supreme court and four judges of the superior court, to be appointed by the governor for a period of four years each. The members of said commission shall serve without compensation other than their necessary expenses incurred in attending meetings of said commission. (1913, cc. 63, 196; 1937, c. 408.)

Eastern Division

First District

Camden—First Monday after the first Monday in March and the fourth Monday after the first

Monday in September. (1913, c. 196; 1921, c. 105; 1937, c. 283, s. 1.)

Chowan—Fourth Monday after the first Monday in March; first Monday after the first Monday in September; fourteenth Monday after the first Monday in September. (1913, c. 196; 1931, c. 87; 1933, c. 456; 1937, c. 102.)

Beaufort—Seventh Monday before the first Monday in March for two weeks, the first week for criminal cases only, and the second week for criminal and civil cases; second Monday before the first Monday in March for two weeks for civil cases only; second Monday after the first Monday in March for criminal cases only; fifth Monday after the first Monday in March for civil cases only; ninth Monday after the first Monday in March for two weeks for civil cases only; sixteenth Monday after the first Monday in March for the trial of criminal and civil cases; second Monday after the first Monday in September for the trial of criminal cases with a grand jury in attendance; third Monday after the first Monday in September for civil cases only; fifth Monday after the first Monday in September for civil cases only; ninth Monday after the first Monday in September for criminal cases and consent trials and decrees in civil cases; thirteenth Monday after the first Monday in September for civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 51; 1919, c. 128, ss. 3, 4; 1927, c. 111; 1931, cc. 4, 8, 87; 1933, c. 3; c. 456, s. 2; 1935, c. 176; 1937, cc. 40, 283, s. 2.)

Second District

Wilson—Fourth Monday before the first Monday in March, to continue for two weeks, the first week for criminal cases only, and the second week for civil cases only; tenth Monday after the first Monday in March, to continue for two weeks, the first week for criminal cases only, and the second week for civil cases only; sixteenth Monday after the first Monday in March, for civil cases only; first Monday in September; fourth Monday after the first Monday in September, for civil cases only; eighth Monday after the first Monday in September, to continue for two weeks, for civil cases only; thirteenth Monday after the first Monday in September and for this term of court a special or emergency judge shall be assigned by the governor to hold the same. (1913, c. 196; 1915, c. 45; 1917, c. 12; 1919, c. 133; 1921, c. 10; 1937, c. 104.)

Third District

Northampton—Fourth Monday after the first Monday in March; Eighth Monday after the first Monday in September, each to continue for two weeks; first Monday in August to continue for one week. (1913, c. 196; 1929, cc. 123, 244; 1933, c. 409; 1935, c. 148; 1937, c. 64.)

Fourth District

Wayne—Sixth Monday before first Monday in March, fifth Monday after the first Monday in March, twelfth Monday after the first Monday in March, second Monday before the first Monday in September, each to continue for one week; twelfth Monday after the first Monday in September, to continue for two weeks; fifth Monday before the first Monday in March, sixth Monday after the first Monday in March, thirteenth Monday after the first Monday in March, first Monday before the first Monday in September, each to

continue for two weeks, for civil cases only; first Monday in March and fifth Monday after the first Monday in September, each to continue for two weeks, for civil cases only.

If no regular judge is available for the two weeks' term of court beginning on the first Monday in March, or for the second week of the terms beginning on the fifth Monday before the first Monday in March, or on the sixth Monday after the first Monday in March, or on the thirteenth Monday after the first Monday in March, or on the first Monday before the first Monday in September, the governor may assign a special judge to hold said court. (1913, c. 196; 1927, c. 77; 1929, c. 132, s. 1; 1937, c. 192.)

Harnett—Eighth Monday before the first Monday in March, one week, for the trial of criminal cases only; fourth Monday before the first Monday in March to continue for two weeks, for the trial of civil cases only; second Monday after the first Monday in March, for the trial of criminal cases only; fourth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; ninth Monday after the first Monday in March for the trial of civil cases only; eleventh Monday after the first Monday in March, one week, for the trial of criminal cases only; fourteenth Monday after the first Monday in March, two weeks, for the trial of civil cases only; first Monday in September for criminal cases only; second Monday after the first Monday in September for the trial of civil cases only; fourth Monday after the first Monday in September to continue for two weeks, civil cases only; tenth Monday after the first Monday in September to continue for two weeks, for the trial of criminal cases only. (1913, c. 196; 1927, c. 161, c. 212; 1931, c. 147; 1937, c. 105.)

Fifth District

Jones—Fourth Monday after the first Monday in March; fifth Monday after the first Monday in November; and second Monday after the first Monday in September.

If the judge regularly assigned to the district in which said county is situate be unable because of another regular term of court in said district, or for other cause, to hold any term of court in said county, the governor may appoint a judge to hold such term from among the regular or emergency judges. (1913, c. 196; Ex Sess. 1913, c. 19; P. L. 1915, c. 363; 1921, c. 159; 1937, c. 29.)

Seventh District

Wake—Criminal courts: Eighth Monday before the first Monday in March; first Monday in March; fifth Monday after the first Monday in March; ninth Monday after the first Monday in March; thirteenth Monday after the first Monday in March; eighth Monday before the first Monday in September; first Monday after the first Monday in September; fifth Monday after the first Monday in September; ninth Monday after the first Monday in September; fourteenth Monday after the first Monday in September. These terms shall be for criminal cases only.

Civil courts: Fifth Monday before the first Monday in March; third Monday before the first Monday in March; first Monday after the first Monday in March, to continue for two weeks; third Monday after the first Monday in March, to continue for two weeks; sixth Monday after

the first Monday in March, to continue for two weeks; eighth Monday after the first Monday in March; eleventh Monday after the first Monday in March, to continue for two weeks; fourteenth Monday after the first Monday in March, to continue for two weeks; second Monday after the first Monday in September, to continue for two weeks; fourth Monday after the first Monday in September; seventh Monday after the first Monday in September, to continue for two weeks; twelfth Monday after the first Monday in September, to continue for two weeks. These terms shall be for civil cases only, and no criminal process shall be returnable to such terms. Provided, that the term beginning on the second Monday after the first Monday in September shall be a mixed term for the trial of both civil and criminal cases, and that the term for trial of criminal cases beginning on the fourteenth Monday after the first Monday in September shall continue for two weeks.

Additional courts: In addition to the courts above set out for Wake county, the following terms of superior court for the trial of civil cases in Wake county shall be held, to wit: the seventh Monday before the first Monday in March to continue for two weeks; the fourth Monday before the first Monday in March to continue for one week; the second Monday before the first Monday in March to continue for two weeks; the first Monday in March to continue for one week; the fifth Monday after the first Monday in March to continue for one week; the ninth Monday after the first Monday in March to continue for one week; the tenth Monday after the first Monday in March to continue for one week; the thirteenth Monday after the first Monday in March to continue for one week; the sixteenth Monday after the first Monday in March to continue for two weeks; the first Monday before the first Monday in September to continue for two weeks; the first Monday in September to continue for one week; the fifth Monday after the first Monday in September to continue for two weeks; the ninth Monday after the first Monday in September to continue for three weeks; the fourteenth Monday after the first Monday in September to continue for two weeks. These terms above provided for shall be for civil cases only. And in addition to the courts above set out for Wake county, the following terms of superior court for the trial of criminal or civil cases, or both, in Wake county shall be held, to wit: the sixth Monday before the first Monday in March to continue for two weeks; the second Monday before the first Monday in March to continue for two weeks; the second Monday after the first Monday in March to continue for two weeks; the seventh Monday after the first Monday in March to continue for one week; the eleventh Monday after the first Monday in March to continue for one week; the sixteenth Monday after the first Monday in March to continue for two weeks; the first Monday before the first Monday in September to continue for two weeks; the third Monday after the first Monday in September to continue for one week; the eighth Monday after the first Monday in September to continue for one week; the tenth Monday after the first Monday in September to continue for two weeks. These terms last above provided for shall be for criminal or civil cases, or

both. The said terms of court, both civil and criminal, herein provided for may be held contemporaneously with other courts in said county. The said terms of court shall be held by regular or special or emergency judges who shall be assigned by the governor. (1913, c. 196; 1917, c. 116; 1919, c. 113; 1924, c. 77; 1937, cc. 163, 387.)

Franklin—Fourth Monday before the first Monday in March, to continue for one week for the trial of criminal cases only; second Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; sixth Monday after the first Monday in March, to continue for one week for the trial of criminal cases only; first Monday in September, to continue for two weeks for the trial of civil cases only; sixth Monday after the first Monday in September, to continue for one week for the trial of criminal cases only; tenth Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only. (1913, c. 196; 1917, c. 116; 1937, c. 387, s. 1.)

The courts provided in the above paragraph to occur on the second Monday after the first Monday in March, and to continue for two weeks for civil cases, and also the terms so provided for criminal cases, convening the sixth Monday after the first Monday in March, and also the second week of the September term, shall be held by special or emergency judges to be assigned by the governor: Provided, however, as to the said criminal term appointed for the sixth Monday after the first Monday in March, if no special or emergency judge shall be available to hold said term, then it shall be held by the judge regularly riding the seventh judicial district. (1937, c. 387, s. 3.)

Eighth District

Columbus — Second Monday before the first Monday in September, to continue two weeks for the trial of criminal and civil cases; eleventh Monday after the first Monday in September, to continue two weeks, for the trial of civil cases only; fifth Monday before the first Monday in March, to continue one week, for the trial of criminal and civil cases; second Monday before the first Monday in March, to continue two weeks, for the trial of civil cases only; eighth Monday after the first Monday in March, to continue two weeks, for the trial of criminal and civil cases; sixteenth Monday after the first Monday in March, to continue one week, for the trial of criminal cases; fifth Monday after the first Monday in September, to continue one week, for the trial of criminal cases; fourth Monday before the first Monday in March, to continue one week, for the trial of criminal and civil cases, and for this term of court the governor shall appoint a judge to hold the same from among the regular, special or emergency judges. (1913, c. 196; Ex. Sess. 1913, c. 61; 1917, c. 124; 1921, cc. 14, 149; Ex. Sess. 1921, c. 40; 1931, c. 246; 1937, c. 52.)

Ninth District

Bladen—Eighth Monday before the first Monday in March for the trial of civil cases, and the trial of criminal cases, where bills have been found, and cases on appeal from the recorder's court and courts of the justices of the peace; the second Monday after the first Monday in March for the trial of criminal cases only; the eighth Monday after the first Monday in March for the trial of

civil cases only; the fourth Monday before the first Monday in September for the trial of civil cases only; the second Monday after the first Monday in September for the trial of criminal cases only. Said courts to continue for one week unless the business is sooner disposed of, and grand juries to be summoned only for the March and September terms of court: Provided, that if the necessity should arise, and the county commissioners of Bladen county should so determine and order, a grand jury may be summoned by said commissioners for the January terms of court; and such grand jury so summoned shall have, perform and exercise all of the powers and duties of regular grand juries herein provided for the March and September terms of court. At any term for the trial of criminal cases, civil cases may be tried by consent. (1913, c. 196; 1915, c. 110; 1927, c. 166, s. 1; 1929, c. 27, s. 1; 1931, c. 96; 1933, c. 77; 1937, c. 159.)

Cumberland—Seventh Monday before the first Monday in March; first Monday in March (judge to be assigned); the first Monday after the first Monday in March; thirteenth Monday after the first Monday in March; first Monday before the first Monday in September; eleventh Monday after the first Monday in September, two weeks; each for criminal cases only. Third Monday before the first Monday in March; third Monday after the first Monday in March; ninth Monday after the first Monday in March; third Monday after the first Monday in September; seventh Monday after the first Monday in September, each to continue for two weeks, for civil cases only. At all criminal terms of court civil cases may be heard by consent of the parties, and motions may be heard upon ten days notice to the adverse party prior to said term. (1913, c. 196; Ex. Sess. 1913, c. 23; 1931, c. 96; 1937, c. 159.)

Robeson—Fifth Monday before the first Monday in March two weeks for the trial of criminal cases; first Monday before the first Monday in March two weeks for the trial of civil cases; fifth Monday after the first Monday in March two weeks for the trial of criminal cases; eleventh Monday after the first Monday in March two weeks for the trial of civil cases; fourteenth Monday after the first Monday in March one week for the trial of civil cases; fifteenth Monday after the first Monday in March one week for the trial of criminal cases; eighth Monday before the first Monday in September one week for the trial of civil cases; third Monday before the first Monday in September one week for the trial of criminal cases; first Monday in September two weeks for the trial of criminal cases; fifth Monday after the first Monday in September two weeks for the trial of civil cases; ninth Monday after the first Monday in September one week for the trial of criminal cases; thirteenth Monday after the first Monday in September two weeks for the trial of civil cases; fifteenth Monday after the first Monday in September one week for the trial of criminal cases.

There shall also be held in Robeson county superior courts, to which judges shall be assigned, the following terms: Second Monday after the first Monday in March one week for the trial of criminal cases; ninth Monday after the first Monday in March two weeks for the trial of criminal cases; third Monday after the first Monday in September one week for the trial of criminal cases;

seventh Monday after the first Monday in September one week for the trial of criminal cases.

At all criminal terms all motions and divorce cases may be heard and jury trials in all civil cases may be heard by consent. The commissioners of Robeson county, by and with the consent and approval of the solicitor of the ninth judicial district, in writing, may call off any term of superior court in said county scheduled above for the trial of criminal cases to which the judge must be assigned. The grand jury shall convene at all criminal terms of said courts unless the solicitor of the ninth judicial district shall, prior to the said court, notify the sheriff of Robeson county not to assemble the grand jury for said term, and such notice, in writing, shall be filed with the clerk of the board of commissioners of said county, and shall be spread upon the minutes of the board of commissioners thereof. (1913, c. 196; 1915, c. 208; 1919, c. 105; 1923, c. 209; 1927, c. 84; 1931, c. 96; 1935, c. 132; 1937, c. 167.)

Western Division

Eleventh District

Alleghany—Eighth Monday after the first Monday in March, and the third Monday after the first Monday in September (both by regular judge). for the trial of criminal and civil cases. (1913, c. 196; 1935, c. 246; 1937, c. 413, s. 4.)

Ashe—Sixth Monday after the first Monday in March, and seventh Monday after the first Monday in September (both by regular judge), for the trial of criminal cases only; twelfth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; sixth Monday before the first Monday in September, to continue for two weeks, for the trial of civil cases only (regular judge): Provided, that motions and uncontested civil cases may be heard at either of the terms designated for the trial of criminal cases only. (1913, c. 196; Ex. Sess. 1913, c. 34; Ex. Sess. 1921, c. 32; 1935, c. 246; 1937, c. 413, s. 4.)

Forsyth—Eighth Monday before the first Monday in March; fourth Monday before the first Monday in March; first Monday in March; fourth Monday after the first Monday in March; ninth Monday after the first Monday in March; fourteenth Monday after the first Monday in March; eighth Monday before the first Monday in September; first Monday in September; fifth Monday after the first Monday in September; ninth Monday after the first Monday in September; thirteenth Monday after the first Monday in September, each of the said terms to continue for two weeks, for the trial of criminal and civil cases.

Sixth Monday before the first Monday in March; second Monday before the first Monday in March; second Monday after the first Monday in March; sixth Monday after the first Monday in March; twelfth Monday after the first Monday in March; sixteenth Monday after the first Monday in March, continued into the ninth Monday before the first Monday in September; second Monday after the first Monday in September; seventh Monday after the first Monday in September; eleventh Monday after the first Monday in September, each term to continue for two weeks, for the trial of civil cases only.

Should there be a conflict of courts either in Ashe or Alleghany counties with the courts of Forsyth County, the governor shall assign an emergency or any other judge available to hold the

term of court in Forsyth county where there is a conflict. (1913, c. 196; 1917, c. 169; 1919, c. 87; 1923, c. 151; 1927, c. 197; 1929, c. 131; 1933, cc. 231, 306; 1935, c. 246; 1937, c. 413, ss. 4, 5. P. L. 1917, c. 375, provides for a criminal calendar.)

Thirteenth District

Scotland—First Monday after the first Monday in March for one week, for the trial of criminal and civil cases; eighth Monday after the first Monday in March for one week, for the trial of civil cases only; fourth Monday before the first Monday in September for one week, for the trial of criminal and civil cases; eighth Monday after the first Monday in September for one week, for the trial of civil cases only; twelfth Monday after the first Monday in September for two weeks, for the trial of criminal and civil cases. (1913, c. 196; Ex. Sess. 1913, c. 22; 1917, c. 105; 1923, c. 178; 1933, c. 116; 1937, c. 371.)

Fourteenth District

Mecklenburg—

The following additional terms of superior court for the trial of civil cases in Mecklenburg county shall be held as follows: April fifth, April nineteenth, May third, May seventeenth, May thirty-first, June fourteenth, August thirtieth, September thirteenth, September twenty-seventh, October eleventh, October twenty-fifth, November eighth, November twenty-second, and December sixth, one thousand nine hundred and thirty-seven; and January third, January seventeenth, January thirty-first, February fourteenth, February twenty-eighth, March fourteenth, March twenty-eighth, April eleventh, April twenty-fifth, May ninth, May twenty-third, June sixth, June twentieth, August twenty-ninth, September twelfth, September twenty-sixth, October tenth, October twenty-fourth, November seventh, November twenty-first, and December fifth, one thousand nine hundred and thirty-eight; and January second, January sixteenth, January thirtieth, February thirteenth, February twenty-seventh, March thirteenth, and March twenty-seventh, one thousand nine hundred and thirty-nine, which said terms of court may be held contemporaneously with other courts in said county or district, shall be for two weeks each, shall be for the trial of civil cases only, and shall be held by regular and/or special or emergency judges who shall be assigned by the governor.

The following additional terms of superior court for the trial of criminal cases in Mecklenburg county shall be held as follows: March fifteenth, June twenty-eighth, July twelfth, July twenty-sixth, August ninth, and December sixth, one thousand nine hundred and thirty-seven; March twenty-first, July fourth, July eighteenth, August first, August fifteenth, and December fifth, one thousand nine hundred and thirty-eight; and March twentieth, one thousand nine hundred and thirty-nine, which said terms of court may be held contemporaneously with other courts in said county or district, shall be for two weeks each, shall be for the trial of criminal cases only, and shall be held by regular and/or special or emergency judges who shall be assigned by the governor. (1937, c. 27.)

Fifteenth District

Alexander—Fourth Monday before the first Monday in March, to continue for two weeks, for

the trial of civil and criminal cases; first Monday before the first Monday in September, to continue for two weeks, for the trial of criminal and civil cases. For these terms of court the governor may assign a judge to hold the same from among the regular, special or emergency judges. (1913, c. 196; 1921, c. 166; 1933, c. 250, s. 4; 1935, cc. 101, 252, s. 2; 1937, c. 214.)

Seventeenth District

Wilkes—First Monday in March for two weeks for the trial of criminal and civil cases; eighth Monday after the first Monday in March for two weeks for the trial of civil cases only; thirteenth Monday after the first Monday in March for two weeks, for the trial of civil cases only; fourth Monday before the first Monday in September for two weeks for the trial of criminal and civil cases; fourth Monday after the first Monday in September, for two weeks, for the trial of civil cases only; eighth Monday after the first Monday in September for two weeks, the first week thereof for the trial of criminal and civil cases, and the remaining one week for the trial of civil cases only. (1913, c. 196; 1919, c. 165; 1921, c. 166; 1935, c. 105, s. 1, c. 192; 1937, c. 48.)

Eighteenth District

McDowell — Ninth Monday before the first Monday in March, to continue for one week for the trial of criminal cases only; the third Monday before the first Monday in March, to continue for two weeks for the trial of civil cases only; the fourteenth Monday after the first Monday in March, to continue for two weeks for the trial of both criminal and civil cases; eighth Monday before the first Monday in September, to continue two weeks for the trial of civil cases only; the first Monday in September, to continue for two weeks for the trial of both criminal and civil cases. (1913, c. 196; Ex. Sess. 1921, c. 24; 1923, c. 219; 1927, c. 207, s. 1; 1935, c. 127; 1937, c. 309.)

Rutherford—First Monday before the first Monday in March, to continue for one week for the trial of civil cases only; sixth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; tenth Monday after the first Monday in March, to continue for two weeks for the trial of both criminal and civil cases; sixteenth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; third Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only; ninth Monday after the first Monday in September, to continue for two weeks for the trial of both civil and criminal cases. (1913, c. 196; 1915, c. 116; Ex. Sess. 1921, c. 24; 1927, c. 207, s. 1; 1933, c. 232, s. 1; 1935, c. 127; 1937, c. 309.)

Twentieth District

Haywood — Eighth Monday before the first Monday in March, to continue for two weeks, for civil cases only; fourth Monday before the first Monday in March, to continue for two weeks; ninth Monday after the first Monday in March, to continue for two weeks, for civil cases only; eighth Monday before the first Monday in September, to continue for two weeks; second Monday after the first Monday in September, for civil cases only and the eleventh Monday after the first Monday in September, each to continue for two

weeks. (1913, c. 196; 1917, cc. 7, 114; 1923, c. 35, s. 2; 1924, c. 27; 1937, c. 106.)

Macon—Sixth Monday after the first Monday in March; second Monday before the first Monday in September, and thirteenth Monday after the first Monday in September, each to continue for two weeks. The board of commissioners of Macon county may, for good cause, decline to draw a jury for more than one week for any term of court provided for in this chapter. (1913, c. 196; 1923, c. 35, s. 1; 1927, c. 245, s. 1; 1937, c. 106.)

Clay—Eighth Monday after the first Monday in September. (1913, c. 196; 1927, c. 245, s. 1; 1937, c. 162.)

Twenty-First District

There is hereby created district number twenty-one composed of the following counties, and the superior courts thereof shall be held at the following times, to wit:

Caswell—Second Monday after the first Monday in March to continue for two weeks; ninth Monday before the first Monday in September to continue for one week; tenth Monday after the first Monday in September to continue for two weeks, for the trial of criminal and civil cases. (1913, c. 196; 1919, c. 289; 1927, c. 202; 1933, c. 45, s. 1; 1935, c. 246; 1937, cc. 107, 413, s. 5.)

Rockingham—Sixth Monday before the first Monday in March to continue for two weeks; eleventh Monday after the first Monday in March to continue for two weeks; fourth Monday before the first Monday in September to continue for two weeks; eighth Monday after the first Monday in September to continue for two weeks; fourteenth Monday after the first Monday in September to continue for one week, for the trial of criminal cases only.

First Monday in March to continue two weeks; sixth Monday after the first Monday in March to continue for one week; ninth Monday after the first Monday in March to continue for two weeks; fourteenth Monday after the first Monday in March to continue for two weeks; first Monday in September to continue for two weeks; seventh Monday after the first Monday in September to continue for one week; twelfth Monday after the first Monday in September to continue for two weeks, for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 49; 1917, c. 107; 1933, cc. 45, 264; 1935, c. 246; 1937, cc. 156, 413, s. 5. P. L. 1915, c. 60, provides for a calendar in Rockingham county.)

Stokes—Fourth Monday after the first Monday in March to continue for one week for the trial of criminal cases only; fifth Monday after the first Monday in March to continue for one week for the trial of civil cases only; sixteenth Monday after the first Monday in March to continue for one week for the trial of criminal cases only; second Monday before the first Monday in September to continue for one week for trial of both criminal and civil cases; fifth Monday after the first Monday in September to continue for one week for the trial of criminal cases only; sixth Monday after the first Monday in September to continue for one week, for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 1; 1921, c. 142; 1923, c. 196; 1929, c. 158; 1937, c. 413, s. 5.)

Surry—Eighth Monday before the first Monday in March to continue for one week; third Monday before the first Monday in March to con-

tinue for one week; seventh Monday after the first Monday in March to continue for one week, second Monday after the first Monday in September to continue for one week; fifteenth Monday after the first Monday in September to continue for one week, for the trial of criminal cases only.

Seventh Monday before the first Monday in March to continue for one week; second Monday before the first Monday in March to continue for two weeks; eighth Monday after the first Monday in March to continue one week; thirteenth Monday after the first Monday in March to continue for one week; eighth Monday before the first Monday in September to continue for two weeks; third Monday after the first Monday in September to continue for two weeks, for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 34; Ex. Sess. 1921, c. 9; 1931, c. 251; 1933, cc. 180, 413; 1935, c. 246; 1937, cc. 210, 413, s. 5.)

Editor's Note.—Only the parts of this section affected by the amendments of 1937 are set out above. If a county does not appear in the above presentation the terms of court are the same as those shown in the North Carolina Code of 1935.

One amendment added the proviso to the first paragraph of this section. Another created the twenty-first judicial district composed of the counties of Caswell, Rockingham, Surry (formerly in the eleventh judicial district) and Stokes (formerly in the twelfth judicial district, now composed of the counties of Guilford and Davidson). See Public Laws 1937, c. 413, which provides that the present resident judge of the eleventh judicial district shall remain the resident judge of said district as now constituted, and the solicitor of the district shall be during his term of office the solicitor of the twenty-first judicial district. The governor was empowered and directed to appoint a solicitor of the eleventh judicial district as now constituted, and a judge of the twenty-first judicial district as now constituted, whose terms of office shall expire on the first day of January following the next general election, and successors are to be elected at the next succeeding general election.

Art. 7. Special Terms of Court

§ 1450. Governor may order special terms.

Applied in State v. Boykin, 211 N. C. 407, 191 S. E. 18.

§ 1452. Notice of special terms.

The notice is directory and not mandatory under this section. State v. Boykin, 211 N. C. 407, 413, 191 S. E. 18.

And Is for the Benefit of the Public.—The notice which is required to be published under this section is designed not for the purpose of warning the jury of the coming term. These persons receive separate notices or summons. Rather, it serves the purpose of notifying the public. It follows, then, that the failure to comply with this section goes to the set-up or organization of the court itself rather than of the jury. State v. Boykin, 211 N. C. 407, 413, 191 S. E. 18.

§ 1456. Attendance and process at special terms.

Applied in State v. Boykin, 211 N. C. 407, 191 S. E. 18.

SUBCHAPTER IIB. DOMESTIC RELATIONS COURTS

Art. 8(B). Counties of at Least Twenty-Five Thousand Inhabitants

§ 1461(i). Election of judge and term of office; vacancy appointments; judge to select clerk; juvenile court officers may be declared officers of new court.

Editor's Note.—Public Laws 1937, c. 263, amended this section so as to provide for an assistant judge of the domestic relations court in Mecklenburg county.

SUBCHAPTER III. JUSTICES OF THE PEACE

Art. 9. Election and Qualification

§ 1463. Election and number of justices.

Editor's Note.—For act relating to Raleigh township in Wake county, see Public Laws 1937, c. 113.

Art. 10. Jurisdiction

§ 1475. Action dismissed for want of jurisdiction; remitter.

Justice Has Jurisdiction to Recover Salary Which Failed to Equal Amount Stipulated in the "President's Re-employment Agreement."—A justice of the peace has jurisdiction of an action on contract to recover the amount by which the salary paid plaintiff failed to equal the amount stipulated in the "President's Re-employment Agreement," voluntarily signed by defendant employer, when the amount demanded does not exceed two hundred dollars. *James v. Sartin Dry Cleaning Co.*, 208 N. C. 412, 181 S. E. 341.

Art. 15. Judgment and Execution

§ 1517. Justice's judgment docketed; lien and execution.

Same—Its Nature in Superior Court.—In accord with second paragraph of original. See *Essex Inv. Co. v. Pickelsimer*, 210 N. C. 541, 187 S. E. 813.

SUBCHAPTER IV. RECORDERS' COURTS

Art. 18. Municipal Recorders' Courts

§ 1536. In what cities and towns established; court of record.

Cited in *Stephens v. Dowell*, 208 N. C. 555, 181 S. E. 629; *State v. Boykin*, 211 N. C. 407, 191 S. E. 18.

§ 1541. Criminal jurisdiction.

Jurisdiction Given Over Crimes Below Grade of Felony.—In order that recorder's courts might be permitted to take cognizance of crime and try criminals without indictment, all crimes below the degree of felony have been declared to be "petty misdemeanors" by subsection (3) of this section. *State v. Boykin*, 211 N. C. 407, 412, 191 S. E. 18.

§ 1549. Issuance and service of process.

Under the proceedings established in "recorder's courts," the complaint and warrant—which, if necessary, must be construed together—have been established as the proper proceeding, just as has come down from the common law as to crimes the punishment of which is within the jurisdiction of a justice of the peace. *State v. Boykin*, 211 N. C. 407, 412, 191 S. E. 18.

§ 1551. Clerk of court; election and duties; removal; fees.

Cited in *Stephens v. Dowell*, 208 N. C. 555, 181 S. E. 629.

§ 1555. Jury trial, as in justice's court.

Editor's Note.—For act, applicable only to Pitt county, providing for transfer of cases to superior court upon demand for jury trial, see Public Laws 1937, c. 134.

§ 1557. Officers' fees; fines and penalties paid.

Editor's Note.—Public Laws 1937, c. 279, applicable to Cabarrus county only, provides that in cases wherein justices of the peace have not final jurisdiction, the fee of the recorder shall be one dollar, and the fee of the prosecuting attorney shall be not more than four dollars.

Art. 19. County Recorders' Courts

§ 1564. Recorder's election, qualification, and term of office.

Editor's Note.—For act providing for appointment of vice-recorder in Mecklenburg county, see Public Laws 1937, c. 253.

§ 1569. Removal of cases from justices' courts.

Editor's Note.—For act, applicable only to Mecklenburg county, relating to payment of costs, etc., see Public Laws 1937, c. 386.

§ 1574. Appeals to superior court.

When the Superior Court sits upon an appeal from a judgment of a justice of the peace in a criminal action, or a judgment of a recorder's court under this section, it is sometimes said to be acting under the derivative jurisdiction of the court from which appeal is taken; the trial is had upon the warrant issued by the court which had jurisdiction and which is required to be transmitted to the

court with the return to the appeal. *State v. Boykin*, 211 N. C. 407, 412, 191 S. E. 18.

Where the case is beyond the jurisdiction of the inferior court, it does not reach the Superior Court under this section by appeal, but only by the process of "binding over," and in such case only is an indictment necessary. Id.

§ 1575. Clerk of superior court ex officio clerk of county recorders' court.

Cited in *State v. Boykin*, 211 N. C. 407, 191 S. E. 18.

§ 1582(b). Subchapter applies to Henderson county.

Editor's Note.—For act abolishing the Henderson county recorder's court, see Public Laws 1937, c. 97.

SUBCHAPTER V. GENERAL COUNTY COURTS

Art. 24. Establishment, Organization and Jurisdiction

§ 1608(f). Establishment authorized; official entitlement; jurisdiction.—In each county of this state except Caswell county, there may be established a court of civil and criminal jurisdiction, which shall be a court of record and which shall be maintained pursuant to this subchapter and which court shall be called the general county court and shall have jurisdiction over the entire county in which said court may be established. (1937, c. 54.)

Editor's Note.—The 1937 amendment inserted the exception as to Caswell county in the first sentence. The rest of the section, not being affected by the amendment, is not set out here.

§ 1608(n). Civil jurisdiction, extent.—The jurisdiction of the general county court in civil actions shall be as follows:

1. Jurisdiction concurrent with that of the justices of the peace of the county;
2. Jurisdiction concurrent with the superior court in all actions founded on contract;
3. Jurisdiction concurrent with the superior court in all actions not founded upon contract;
4. Jurisdiction concurrent with the superior court in all actions to try title to lands and to prevent trespass thereon and to restrain waste thereof;
5. Jurisdiction concurrent with the superior court in all actions pending in said court to issue and grant temporary and permanent restraining orders and injunctions;
6. Jurisdiction concurrent with the superior court of all actions and proceedings for divorce and alimony, or either;
7. Jurisdiction concurrent with the superior court in all matters pending in said court for the appointment of receivers, as provided in section eight hundred and fifty-nine, et seq. of the Consolidated Statutes;
8. Jurisdiction concurrent with the superior court to appoint receivers. (1923, c. 216, s. 14; 1935, c. 171; 1937, c. 58.)

Editor's Note.—The 1937 amendment added paragraphs 7 and 8 to this section.

Court Had No Jurisdiction to Appoint a Receiver for Judgment Debtor Having Property in Another County.—The jurisdiction of a general county court is statutory, and it has no extraterritorial jurisdiction except that expressly given within the limitations of the Constitution, hence the general county court of Buncombe County was held without jurisdiction to appoint a receiver for a judgment debtor having property in another county against whom judgment is rendered in the county court, this section giving no power to appoint a receiver, and the authority to issue "process" given by § 1608(t), being limited ordinarily to summons to compel appearance in court. *Essex Inv. Co. v. Pickelsi-*

mer, 210 N. C. 541, 187 S. E. 813, decided prior to the 1937 amendment.

§ 1608(s) 1. Application of article.—This article shall not apply to any county in which there has been established a court, inferior to the superior court, by whatever name called, by a special act, nor shall this article apply to the following counties: Granville, Henderson, Iredell, New Hanover, Pasquotank, Randolph and Wake, [nor shall it apply to the counties in the sixteenth (16th)] seventeenth (17th) except Watauga county, and nineteenth (19th) judicial districts, except Buncombe county. (1924, c. 85, s. 24, f; 1925, c. 9; 1927, c. 103, ss. 1, 2; 1929, c. 159, s. 1; 1931, c. 19; 1937, c. 439.)

Editor's Note.—The 1937 amendment made this article applicable to Watauga county and authorized the establishment of a county court therefor.

Art. 25. Practice and Procedure

§ 1608(t). Procedure in civil actions; return of process.

Reference.—See note to § 1608(n) in this Supplement.

§ 1608(u). Trial by jury; waiver; deposit for jury fee.—In all civil actions the parties shall be deemed to have waived a jury trial unless demand shall be made therefor in the pleadings of the parties to the action when same are filed. The demand shall be in writing and signed by the party making it, or by his attorney, and accompanied by a deposit of three dollars to insure the payment of the jury tax: Provided, such demand shall not be used to the prejudice of the party making it. Any defendant in a criminal action may demand a trial by jury, in which event such defendant shall not be required to deposit the sum of three dollars. Such jury shall be drawn as herein otherwise provided for. (1923, c. 216, s. 8; 1924, c. 85, s. 1; 1937, c. 56.)

Editor's Note.—Prior to the 1937 amendment demand for jury trial was required to be made "before the trial begins."

Public Acts 1937, c. 85, applicable only to Duplin county, struck out the last two sentences of this section.

§ 1608(cc). Appeals to superior court in civil actions; time; record; judgment; appeal to supreme court.—Appeals in civil actions may be taken from the general county court to the superior court of the county in term time for errors assigned in matters of law in the same manner as is now provided for appeals from the superior court to the supreme court except that appellant shall file in duplicate statement of case on appeal, as settled, containing the exceptions and assignments of error, which, together with the original record, shall be transmitted by the clerk of the general county court to the superior court, as the complete record on appeal in said court; that briefs shall not be required to be filed on said appeal, by either party, unless requested by the judge of the superior court. The record on appeal to the superior court shall be docketed before the next term of the superior court ensuing after the case on appeal shall have been settled by the agreement of the parties or by order of the court, and the case shall stand for argument at the next term of the superior court ensuing after the record on appeal shall have been docketed ten days, unless otherwise ordered by the court. The time for taking and perfecting appeals shall be counted from the end of the term of the general county court at which such trial is had.

Upon such appeal the superior court may either affirm or modify the judgment of the general county court, or remand the cause for a new trial. From the judgment of the superior court an appeal may be taken to the supreme court as is now provided by law. (1923, c. 216, s. 18; 1933, c. 109; 1937, c. 84.)

Editor's Note.—The 1937 amendment, inserting the second sentence of this section, provides: "This act shall apply to all cases tried before the ratification of this act in which an appeal has been entered and time for service of case on appeal and counter-case or exceptions has been extended by order of court with consent of counsel for parties."

Superior Court Sits as an Appellate Court.—In hearing civil cases on appeal from the general county court, the Superior Court sits as an appellate court, subject to review by the Supreme Court. *Jenkins v. Castelleo*, 208 N. C. 406, 408, 181 S. E. 266, citing *Cecil v. Snow Lbr. Co.*, 197 N. C. 81, 147 S. E. 735.

In Granting a New Trial It Is Essential That the Superior Court Specifically State the Rulings upon Exceptions.—Where an appeal is taken from the general county court to the Superior Court for errors assigned in matters of law, as authorized by this section, and a new trial is granted by the Superior Court, it is essential that the rulings upon exceptions granting the new trial be specifically stated, so that in case of appeal to the Supreme Court, they may be separately assigned as error in accordance with Rule 19(3) of the Rules of Practice in the Supreme Court, and properly considered on appeal. *Jenkins v. Castelleo*, 208 N. C. 406, 181 S. E. 266.

Where the record is not docketed in the Superior Court within the time prescribed, the appeal is properly dismissed, it being formerly provided that appeals from the general county court shall be governed by the rules governing appeals from the Superior Courts to the Supreme Court, and dismissal in such circumstances is mandatory under Rule of Practice in the Supreme Court No. 5. *Grogg v. Graybeal*, 209 N. C. 575, 184 S. E. 85, decided prior to the 1937 amendment.

§ 1608(dd). Enforcement of judgments; stay of execution, etc.

When the judgment of a general county court is docketed in the Superior Court of the county it becomes a judgment of the Superior Court in like manner as transcribed judgments of justices of the peace under § 1517, and the general county court has no further jurisdiction of the case, and may not thereafter hear a motion for the appointment of a receiver for the judgment debtor. *Essex Inv. Co. v. Pickelsimer*, 210 N. C. 541, 187 S. E. 813.

SUBCHAPTER VI. CIVIL COUNTY COURTS

Art. 28. Under Chapter 437, Acts of 1937

§ 1608(vvv). Establishment.—In addition to the plans now provided by law for the establishment of courts inferior to the superior court, there may be established by resolution of a majority of the members of the board of county commissioners of any county in the state a court of civil jurisdiction, which shall be a court of record, shall be called County Civil Court and shall have civil jurisdiction as herein provided. (1937, c. 437, s. 1.)

§ 1608(www). Qualification of judge.—The county civil court shall be presided over by a judge, who may be an attorney at law, who shall at the time of appointment and qualification be an elector in and for said county, and he shall not by reason of his term of office be prohibited from practicing the profession of attorney at law in other courts except as to matters pending in connection with or growing out of said county civil court. (1937, c. 437, s. 2.)

§ 1608(xxx). Appointment of judge; vacancies; substitute judge.—After the ratification of this article and the establishment of such court by any county, it shall be the duty of the clerk of the

board of commissioners of such county to immediately notify the governor of the state, who shall appoint a judge to preside over such court, and each second year thereafter it shall be the duty of the governor of the state to appoint the judge of each such county civil court, who shall preside over said court; that the said judge shall hold office for a term of two years and until his successor is appointed and qualified. Any vacancy occurring in the office of judge shall be filled by the governor of the state.

When the judge of said county civil court is unable to hold court on account of sickness, absence, disqualification or other cause, the governor of the state shall appoint some other person, who shall take the same oath and possess the same qualifications as provided for a judge, to act as substitute judge, who shall be invested with all the powers and duties of the judge. At the time of fixing the salary for the judge, the board of county commissioners shall fix a per diem compensation for the substitute judge which shall be paid out of the salary fixed for the judge. (1937, c. 437, s. 3.)

§ 1608(yyy). Oath of judge.—Before entering upon the duties of his office, the said judge shall take and subscribe an oath of office as is now provided by law for the judges of the superior court, and file the same with the clerk of the superior court of said county; and said clerk shall record the same. (1937, c. 437, s. 4.)

§ 1608(zzz). Salary of judge.—The salary of said judge shall be fixed by the board of commissioners of the county, shall not be decreased during the term of office, and shall be paid in monthly installments out of the funds of the county. The judge shall be provided by the county board of commissioners with a suitable and convenient room for holding court at the county-seat. (1937, c. 437, s. 5.)

§ 1608(aaaa). Disqualification of judge.—Where the judge is disqualified by reason of interest in any case, it shall be removed for trial to the superior court of the county. (1937, c. 437, s. 6.)

§ 1608(bbbb). Clerk of court.—The clerk of the superior court shall be ex officio clerk of the county civil court established under the provisions of this article, and he shall have as nearly as possible the same duties, powers and responsibilities with reference to the county civil court as he has in his capacity as clerk of the superior court. The said clerk shall be liable upon his official bond for the discharge of his duties and caring for funds paid to him as clerk of the county civil court to the same extent as he is bound as clerk of superior court. In addition to the salary or fees paid him as clerk of superior court, the clerk of the county civil court shall be paid such additional reasonable compensation as the board of county commissioners may fix; and the board of county commissioners are hereby authorized and empowered to provide the salary of such additional deputy or deputies as he may need. (1937, c. 437, s. 7.)

§ 1608(cccc). Oath of clerks.—The clerks of the county civil court, before entering on the duties of their office, shall take and subscribe, before some officer authorized by law to administer an oath, the oath required under general law, and

in addition thereto shall take and subscribe to an oath to perform faithfully all the duties required of them under this article and file such oaths with the register of deeds for the county. (1937, c. 437, s. 8.)

§ 1608(dddd). Appointment and removal of deputies.—Each clerk of the county civil court shall have the authority to appoint deputy clerks and the authority to revoke such appointments at will. He shall make a record of each appointment and furnish a transcript of such record to the register of deeds, who shall record the same in the record of deeds and make a cross-index thereof. When the appointment of any deputy clerk is revoked, the clerk shall write on the margin of the records of such appointment the word "revoked" and the date of revocation, and sign his name thereto. (1937, c. 437, s. 9.)

§ 1608(eeee). Oath and power of deputies.—If any deputy clerk shall be appointed as provided in this article, he shall take and subscribe to the oaths prescribed for clerks. Each deputy clerk appointed as herein provided shall have as nearly as possible the same powers and duties, with reference to the county civil court, as a deputy clerk of the superior court has with reference to the superior court. (1937, c. 437, s. 10.)

§ 1608(ffff). Sheriff.—The sheriff of the county, or his deputies appointed, shall attend upon this court in the same manner and with the same power and authority as he does and has in attendance upon the superior court of the county. The board of county commissioners of the county are authorized to make said sheriff such additional allowances as they may deem necessary and proper for such services, in addition to his salary or fees now fixed by law. (1937, c. 437, s. 11.)

§ 1608(gggg). Stenographer.—The board of county commissioners shall appoint an official stenographer of the court, whose duties shall be the same as those of the official stenographer of the superior court, and the compensation shall be fixed and paid by the board of county commissioners. (1937, c. 437, s. 12.)

§ 1608(hhhh). Jury trial.—In the trial of actions in said court any party is entitled to the right of trial by jury as is provided in the trial of causes in the superior court, unless said right of trial by jury shall be waived as hereinafter provided. (1937, c. 437, s. 13.)

§ 1608(iiii). Waiver of jury trial; jurisdiction concurrent with superior court.—In those cases in which written pleadings are required to be filed, the parties shall be conclusively presumed to have expressly waived their right to trial by jury, unless at the time of the filing of the complaint or petition the plaintiff, in writing, demands a jury trial; or, at the time of the filing of the answer or other pleading which raises an issue of fact, the defendant or other party filing such pleading demands, in writing, a jury trial. (1937, c. 437, s. 13(a).)

§ 1608(jjjj). Waiver of jury trial; jurisdiction concurrent with justice of peace.—In those cases in which no written pleadings are required, the parties shall be conclusively presumed to have expressly waived their right to trial by jury, unless

at the time of the issuance of summons the plaintiff or petitioner, in writing, demands a jury trial; or the defendant, at any time before the commencement of the trial, in writing, demands a jury trial. (1937, c. 437, s. 13(b).)

§ 1608(kkkk). Jury trial in cases instituted in superior court or before magistrate.—In those cases which were or may hereafter be instituted before a justice of the peace and removed or appealed to this court, and in those cases which were or may hereafter be instituted in superior court and removed to this court, a jury trial will be conclusively presumed to have been expressly waived unless the party desiring a trial by jury shall make a demand therefor, in writing, at any time before the case is called for trial; in which event the number of the jury shall be as herein elsewhere provided. (1937, c. 437, s. 13(c).)

§ 1608(llll). Jury of six; demand and deposit for jury of twelve.—The jury of said court shall be a jury of six unless, at any time before the calling of the cause for trial, either party, who has not waived the right to trial by jury by failing to demand a jury trial in apt time as provided herein, or otherwise, demands a trial by a jury of twelve, in which event a jury of twelve shall be impaneled: Provided, that in those cases in which a jury of twelve is demanded the party shall, at the time of making the demand, pay to the clerk of said court a deposit of five dollars to insure the payment of the jury tax: Provided further, that where a party making such demand for a jury of twelve makes affidavit and satisfies the judge or clerk of said court that he is unable to make the deposit, such party shall not be required to make the same. The deposit for jury of twelve shall be returned to the party making it when the jury tax is paid by the losing party against whom the costs are taxed. (1937, c. 437, s. 13(d).)

§ 1608(mmmm). Judge may impanel jury on own motion.—The judge of said court, when in his opinion the ends of justice would be best served by submitting an issue or issues to the jury, may call a jury of his own motion and submit to it such issue or issues as he may deem material. (1937, c. 437, s. 13(e).)

§ 1608(nnnn). Drawing juries; summons of jurors; pay of jurors.—The regular jurors shall be drawn from the superior court jury box; the drawing and summoning of said jurors shall be in the same manner as jurors are drawn and summoned for the superior court: Provided, however, only twelve jurors shall be drawn and summoned for any one week of court unless the judge specifies that a larger number shall be drawn. The judge of each county civil court, at least thirty days in advance, shall notify the chairman of the board of county commissioners when a jury will be needed.

Jurors shall receive the same compensation as is provided by law for jurors serving in the superior court, to be paid out of the treasury of said county on presentation of a ticket duly issued by the clerk of said court. (1937, c. 437, s. 14.)

§ 1608(oooo). Talesmen.—The judge shall have the right to call in talesmen to serve as jurors, according to the practice of the superior court, and to direct the sheriff to summon a suffi-

cient number of talesmen to serve during any one week or a portion thereof for the proper dispatch of the business of the court. (1937, c. 437, s. 15.)

§ 1608(pppp). When court opens; terms of court.—The county civil courts shall be open for the transaction of business within their jurisdiction whenever matters before the court require attention, except for the trial of issues of fact requiring a jury and the trial of contested causes wherein the county civil court is exercising jurisdiction concurrent with that of the superior court, which shall be heard in term time.

The judge of the county civil court is hereby authorized to fix the terms of said court upon consulting with the clerk of the court and the members of the bar of the county. (1937, c. 437, s. 16.)

§ 1608(qqqq). Jurisdiction.—The county civil court shall have jurisdiction only in civil matters and as follows:

(1) Jurisdiction concurrent with that of the justices of the peace of the county;

(2) Jurisdiction concurrent with the superior court in all actions founded on contract wherein the amount demanded shall not exceed the sum of one thousand five hundred dollars, exclusive of interest and costs;

(3) Jurisdiction concurrent with the superior court in all actions not founded on contract wherein the amount demanded shall not exceed the sum of one thousand five hundred dollars, exclusive of interests and costs;

(4) Jurisdiction concurrent with the superior court in all actions to try title to lands, to prevent trespass thereon, and to restrain waste thereof wherein the value of the land does not exceed the sum of one thousand five hundred dollars;

(5) Jurisdiction concurrent with the superior court in all actions and proceedings for divorce and alimony, or either, and to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper. (1937, c. 437, s. 17.)

§ 1608(rrrr). Appeals from justice of the peace.—In all cases where there is an appeal from a justice of the peace of a county wherein a county civil court has been established under the provisions of this article, such appeal shall be first heard de novo in the county civil court in the manner provided herein for hearing causes within the jurisdiction of a justice of the peace originating in the said county civil court. Said appeals shall be docketed in the county civil court within the same time limit and in the same manner as such appeals are now required to be docketed in the superior court. (1937, c. 437, s. 18.)

§ 1608(ssss). Removal of cause before justice of peace.—When, upon affidavit made before entering upon the trial of any cause before any justice of the peace of said county, it shall appear proper for said cause to be removed for trial to some other justice of the peace, as is now provided by law, said cause shall be removed for trial to the said county civil court. (1937, c. 437, s. 19.)

§ 1608(tttt). Pending cases, transfer.—By written consent of plaintiff and defendant filed with the clerk of superior court, any case within the jurisdiction of the county civil court, now or hereafter pending in the superior court, may be trans-

ferred to the docket of the county civil court and there tried; if a jury trial is desired, it shall be expressed in the agreement to transfer the case; otherwise, the right to trial by jury shall be conclusively presumed to have been expressly waived. (1937, c. 437, s. 20.)

§ 1608(uuuu). Records; blanks, forms, books, stationery.—The clerk of the county civil court shall keep separate records for use of the said court to be furnished by the county commissioners, and they shall also provide such necessary blanks, forms, books, and stationery and office equipment as may be needed by the court; the clerk shall keep the same in the office of the clerk of such court. (1937, c. 437, s. 21.)

§ 1608(vvvv). Processes; pleadings; procedure, etc.—When the county civil court is exercising jurisdiction concurrent with that of the superior court, the rules of processes, pleadings, procedure, practice, and procuring evidence and judgment shall conform as nearly as possible to those of the superior court.

When the county civil court is exercising jurisdiction concurrent with that of justices of the peace, actions shall be commenced in the county civil court by summons issued and signed by the clerk or deputy; and orders to seize property in claim and delivery proceedings, warrants of attachment and subpoena may be issued by the clerk or deputy and the other rules of processes, pleadings, procedure, practice, and procuring evidence and judgments shall conform as nearly as possible to those of the courts of the justices of the peace of the county. (1937, c. 437, s. 22.)

§ 1608(wwww). Appeal to superior court, time for perfecting appeal, record on appeal, briefs, judgment, appeal to supreme court.—Appeals in actions may be taken from the county civil court within ten days from date of rendition of judgment to the superior court of the county in term time, for errors assigned in matters of law or legal inference, in the same manner as is provided for appeals from the superior court to the supreme court, except as follows:

(1) The appellant shall cause a copy of the statement of case on appeal to be served on the respondent within thirty days from the entry of the appeal taken, and the respondent, within fifteen days after such service, shall return the copy with his approval or specific amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved: Provided, that the judge trying the case shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counter statement of case.

(2) The appellant shall file one typewritten copy of the statement of case on appeal, as settled, containing the exceptions and assignments of error, which, together with the original record, shall be transmitted by the clerk of the county civil court to the superior court as the complete record on appeal in said court.

(3) The record in the case on appeal to the superior court must be docketed in the superior court within ten days after the date of settling the

case on appeal. If the appellant shall fail to perfect his appeal within the prescribed time, the appellee may file with the clerk of superior court a certificate of the clerk of court from which the appeal comes showing the names of the parties thereto, the time when the judgment and appeal were taken, the name of the appellant and the date of the settling of case on appeal, if any has been settled, with his motion to docket and dismiss said appeal at appellant's cost, which motion shall be allowed at the first regular term or any succeeding regular term of the superior court.

(4) Appellant shall file one typewritten brief with the clerk of superior court, and shall immediately mail or deliver to appellee's counsel a carbon typewritten copy thereof. If appellant's brief has not been filed with the clerk of superior court, and no copy has been delivered to appellee's counsel within three weeks from the date of settling the case on appeal, the appeal will be dismissed on motion of appellee at the next regular term or any succeeding regular term of the superior court, unless for good cause shown the court shall give appellant further time to file his brief.

(5) Appellee shall file one typewritten brief and a carbon copy thereof with the clerk of superior court within five weeks from the date of settling the case on appeal; the copy of same will be furnished counsel for appellant by the clerk of superior court, on application. On failure of the appellee to file his brief by the time required, the case will be heard and determined at the next regular term or any succeeding regular term of the superior court without argument from appellee, unless for good cause shown the court shall give appellee further time to file his brief.

(6) It shall be the duty of any judge of the superior court holding court in any county where a court is established under the provisions of this article, to allot sufficient and adequate time during each regular term of the superior court held in such county for the hearing of appeals from the county civil court of such county: Provided, no such appeal shall be heard until five days has expired since the filing of appellee's brief or since the time appellee's brief should have been filed.

(7) Upon such appeal, the superior court may either affirm or modify the judgment of the county civil court or remand the cause for a new trial.

(8) From the judgment of the superior court an appeal may be taken to the supreme court as is now provided by law. (1937, c. 437, s. 23.)

§ 1608(xxxx). Stay of execution; enforcements of judgments, etc.—Orders to stay execution on judgments entered in the county civil court shall be the same as in appeals from the superior court to the supreme court.

Judgments of the county civil court shall be docketed in the judgment docket of the superior court as is provided for judgments of the superior court, and the judgment when docketed shall in all respects be a judgment of the superior court in the same manner and to the same extent as if rendered by the superior court, and shall be subject to the same statute of limitations and the statutes relating to the revival of judgments in the superior court and issuing executions thereon. (1937, c. 437, s. 24.)

§ 1608(yyyy). Court seal.—The county civil

courts shall have a seal with the impression "..... County Civil Court," which shall be used in attestation of all summonses, other processes, acts, or judgments of said court whenever required, and in the same manner and in the same effect as the seal of other courts of record in the state of North Carolina. (1937, c. 437, s. 25.)

§ 1608(zzzz). **Costs and fees.**—There shall be taxed in the county civil court the same costs and fees for services of the officers thereof as provided for the court having concurrent jurisdiction; such costs and fees shall be taxed and collected by the clerk and paid over monthly to the treasurer of the county as county funds to be dealt with by the commissioners. (1937, c. 437, s. 26.)

§ 1608(aaaaa). **Abolishing Court.**—This court may be abolished by resolution of a majority of the board of county commissioners of any county for such county by giving written notice of such intention six months prior to the end of the term of any presiding judge thereof, to become effective at the end of such term of office; and in case of the abolition of the court, cases then pending shall be transferred to the superior court and there tried. (1937, c. 437, s. 27.)

§ 1608(bbbbb). **Existing laws not repealed.**—This article shall not be construed to repeal or modify any existing laws by which a county court may be created or to affect or repeal any court now or hereafter created under existing laws, and shall only be construed to be an additional method by which a county court may be established. (1937, c. 437, s. 28.)

§ 1608(ccccc). **Counties excepted.**—The provisions of this article shall not apply to Caswell and Wayne counties. (1937, c. 437, s. 30.)

SUBCHAPTER VII. COUNTY CRIMINAL COURTS

§ 1608(10). **Jurisdiction; appeal; judgment docket.**

Editor's Note.—Public Laws 1937, c. 123, repealed Public Laws 1931, c. 241, relative to civil jurisdiction of recorder's court in Gates county.

CHAPTER 28

DEBTOR AND CREDITOR

Art. 1. Assignments for Benefit of Creditors

§ 1611. **Trustee to recover property conveyed fraudulently or in preference.**

Judgment Not a Preference Prohibited by This Section.—A judgment duly rendered by a court of competent jurisdiction against a debtor assigning his property to a trustee for the benefit of creditors is not a transfer or conveyance of property by the assignor, although the judgment is rendered within four months prior to the assignment to the trustee, and the judgment is not a preference prohibited by this section, and will not be declared void upon suit of the trustee. *Pritchett v. Tolbert*, 210 N. C. 644, 188 S. E. 71.

Execution on Personalty Prior to Registration of Deed of Assignment Creates Prior Lien.—Where a valid judgment is rendered within four months prior to an assignment for benefit of creditors by the judgment debtor, and execution is issued thereon and personal property of the debtor levied upon prior to the registration of the deed of assignment, the judgment is a lien upon the personal property levied upon prior to the title of the trustee in the deed of assignment. *Pritchett v. Tolbert*, 210 N. C. 644, 188 S. E. 71.

CHAPTER 29

DESCENTS

§ 1654. Rules of descent.

Rule 12, Seizin defined. Every person, in whom a seizin is required by any of the provisions of this chapter, shall be deemed to have been seized, if he may have had any right, title or interest in the inheritance. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 13.)

Editor's Note.—A part of this section is reprinted to correct an error in the original.

Section Held Not to Apply to Person Dying before Its Enactment.—The provisions of this section held not to affect the distribution of an estate of a person dying prior to the enactment of the statute, the provision of the statute that it should apply to estates of such persons whose estates had not then been distributed being inoperative, and an illegitimate person dying prior to the enactment of the statute leaving only the brothers of his mother, or their legal representatives, him surviving, leaves no person surviving him entitled to inherit from him, and his property, both real and personal held to vest immediately in the University of North Carolina under the Constitution and laws of this state. *Carter v. Smith*, 209 N. C. 788, 185 S. E. 15. See Editor's Note in the original.

CHAPTER 30

DIVORCE AND ALIMONY

§ 1659. Grounds for absolute divorce.

Cited in *Hyder v. Hyder*, 210 N. C. 486, 187 S. E. 798; *Burrows v. Burrows*, 210 N. C. 788, 188 S. E. 648.

§ 1659(a). **Divorce after separation of two years on application of either party.**—Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for two years, and the plaintiff in the suit for divorce has resided in the state for a period of one year. This section shall be in addition to other acts and not construed as repealing other laws on the subject of divorce. (1931, c. 72; 1933, c. 163; 1937, c. 100, ss. 1, 2.)

Editor's Note.—In *Parker v. Parker*, 210 N. C. 264, 186 S. E. 346, the supreme court ruled that no divorce could be obtained under this section unless a separation agreement, express or implied, existed. The 1937 amendment, apparently intended to avoid this construction requiring the existence of a separation agreement, amends the statute by striking out the phrase, "either under deed of separation or otherwise." 15 N. C. Law Rev., No. 4, p. 348.

Either party may bring an action for absolute divorce under this section and the jury's finding that defendant did not abandon plaintiff without cause does not preclude judgment in plaintiff's favor. *Campbell v. Campbell*, 207 N. C. 859, 176 S. E. 250.

Meaning of "Separation."—The word "separation," as applied to the legal status of a husband and wife, means more than "abandonment;" it means a cessation of cohabitation of husband and wife, by mutual agreement. *Parker v. Parker*, 210 N. C. 264, 186 S. E. 346, citing *Lee v. Lee*, 182 N. C. 61, 108 S. E. 352.

Section Did Not Apply Where Separation Was without Cause and without Agreement.—While the applicant need not be the injured party, the statute did not authorize a divorce where the husband has separated himself from his wife, or the wife has separated herself from her husband, without cause and without agreement, express or implied. *Parker v. Parker*, 210 N. C. 264, 186 S. E. 346; *Reynolds v. Reynolds*, 210 N. C. 554, 187 S. E. 768; *Hyder v. Hyder*, 210 N. C. 486, 187 S. E. 798, decided prior to the 1937 amendment.

Question of Resumption of the Conjugal Relation after

Separation Is for Jury.—*Reynolds v. Reynolds*, 210 N. C. 554, 187 S. E. 768, decided prior to 1937 amendment.

Husband Not Entitled to Divorce on His Own Criminal Conduct.—A husband may not ground an action for divorce under this section on his own criminal conduct towards his wife. *Reynolds v. Reynolds*, 208 N. C. 428, 181 S. E. 338; *Campbell v. Campbell*, 207 N. C. 859, 176 S. E. 250; *Long v. Long*, 206 N. C. 706, 175 S. E. 85, distinguished. Followed in *Hyder v. Hyder*, 210 N. C. 486, 187 S. E. 798.

Cited in *Goodman v. Goodman*, 208 N. C. 416, 181 S. E. 328.

§ 1660. Grounds for divorce from bed and board.

Only the party injured is entitled to a divorce under this section. *Vaughan v. Vaughan*, 211 N. C. 354, 358, 190 S. E. 492, citing *Carnes v. Carnes*, 204 N. C. 636, 169 S. E. 222; *Albritton v. Albritton*, 210 N. C. 111, 185 S. E. 762.

Applied in *Albritton v. Albritton*, 210 N. C. 111, 185 S. E. 762.

§ 1663(1). Resumption of maiden name authorized; adoptions of name of prior deceased husband validated.—Any woman at any time after the bonds of matrimony theretofore existing between herself and her husband have been dissolved by a decree of absolute divorce, may resume the use of her maiden name upon application to the clerk of the court of the county in which she resides, setting forth her intention so to do. Said application shall be addressed to the clerk of the court of the county in which such divorced woman resides, and shall set forth the full name of the former husband of the applicant, the name of the county in which said divorce was granted, and the term of court at which such divorce was granted, and shall be signed by the applicant in her full maiden name. The clerks of court of the several counties of the state shall provide a permanent book in which shall be recorded all such applications herein provided for, which shall be indexed under the name of the former husband of the applicant and under the maiden name of such applicant. The clerk of the court of the county in which said application shall be recorded shall charge a fee of one (\$1.00) dollar for such registration. In every case where a married woman has heretofore been granted a divorce and has, since the divorce, adopted the name of a prior deceased husband, the adoption by her of such name is hereby validated. (1937, c. 53.)

§ 1664. Custody of children in divorce.

Habeas Corpus Is Not Appropriate Writ When Parties Are Divorced.—Although statutory habeas corpus is an appropriate writ to determine the custody of children as between married parents living in a state of separation under § 2241, it is not appropriate when they are divorced. *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

Five Days' Notice Is Applicable Only to Parent Who Does Not Have Control of Child.—The provision in the statute dispensing with the notice of five days, when it appears that the parent having possession or control of the infant child of the parties to the action has removed or is about to remove such child from the jurisdiction of the court is applicable only where the application or motion is made by the parent who does not have possession or control of the child, and is for the protection of the rights of such parent, and not of the parent who has possession or control of the child at the time the application or motion is made. In such case, no notice to the adverse party is required. *Burrowes v. Burrowes*, 210 N. C. 788, 794, 188 S. E. 648.

§ 1666. Alimony pendente lite; notice to husband.

III. PREREQUISITES TO AWARD.

A. Entitled to Relief.

Finding Facts as Alleged Sufficient.—

In accord with original. See *Vaughan v. Vaughan*, 211 N. C. 354, 190 S. E. 492.

Upon application for alimony pendente lite the trial court is required to find the facts in order that the correctness of its ruling may be determined on appeal, and the granting of the application solely upon a finding that defendant was the owner of certain properties is error. *Dawson v. Dawson*, 211 N. C. 453, 190 S. E. 749.

§ 1667. Alimony without divorce.

Independent Suits.—

In accord with original. See *Dawson v. Dawson*, 211 N. C. 453, 190 S. E. 749.

Section Applies Only to Actions Instituted by Wife.—A child of divorced parents is not entitled to an allowance of counsel fees and suit money pendente lite in her action against her father to force him to provide for her support, this section and § 1666 applying only to actions instituted by the wife, and such right not existing at common law. *Green v. Green*, 210 N. C. 147, 185 S. E. 651.

Establishing of One Cause for Divorce Is Sufficient Although Three Alleged.—In a suit for alimony without divorce where three separate grounds for divorce a mensa et thoro were alleged in the complaint, it was held not necessary for the plaintiff to establish all of them in order to sustain her action, it being sufficient under this section if she established the defendant's guilt of any of the acts that would constitute a cause for divorce from bed and board as enumerated in § 1660. *Albritton v. Albritton*, 210 N. C. 111, 116, 185 S. E. 762. See also, *Hagedorn v. Hagedorn*, 211 N. C. 175, 189 S. E. 507.

Where the complaint alleges facts sufficient to entitle plaintiff to alimony pendente lite under this section, it is not error for the court to grant plaintiff's motion therefor and refuse to find the facts upon which the order is based, since it will be presumed that the court found the facts as alleged in the complaint for the purposes of the hearing. *Southard v. Southard*, 208 N. C. 392, 180 S. E. 665.

Cited in *Reynolds v. Reynolds*, 208 N. C. 578, 182 S. E. 341; *Hagedorn v. Hagedorn*, 210 N. C. 164, 185 S. E. 768.

CHAPTER 31

DOGS

§ 1673. Amount of tax.

Editor's Note.—Public Laws 1937, c. 45, s. 2, provides that no person owning six or more fox hounds in Northampton county shall be required to pay any taxes on any of the same.

Art. 2. License Taxes on Dogs

§ 1681. Proceeds of tax to school fund; proviso, payment of damages; reimbursement by owner.—

And provided also that all that portion of this section after the word "collected" in line three thereof, shall not apply to Anson, Beaufort, Hertford, Warren, Yadkin, Lincoln and Bladen counties. (1919, c. 116, s. 7; 1925, cc. 15, 25, 79; 1933, c. 28; 1935, cc. 30, 361, 402; 1937, cc. 63, 75, 118, 282, 370.)

Editor's Note.—The amendments of 1937 inserted Beaufort, Warren, Hertford, Anson and Yadkin counties, respectively, in the last proviso of this section. The rest of the section, not being affected by the amendments, is not set out here.

Public Laws 1933, c. 273, was repealed as to Mitchell county by Public Laws 1937, c. 73, and this section applies thereto.

Public Laws 1937, c. 119, applicable only to Buncombe county, provided that dog taxes be applied one-half to the general fund of the county and one-half to the school fund. Public Laws 1937, c. 47, provided the same for Duplin county.

Public Laws 1937, c. 92, provides: "No part of the taxes paid on dogs pursuant to chapter thirty-one of the Consolidated Statutes, and no part of any taxes collected in Greene county, shall be liable or used to pay for depredation, damage or injury to persons or property by dogs."

Public Laws 1937, c. 23, provides that "no damages shall

be paid by Caldwell county to any person for sheep or other property destroyed by dogs in said county."

Public Laws 1937, c. 76, provides that "no damages shall be paid by Pender county to any person for sheep or other property destroyed by dogs in said county except such damages as may be awarded within the discretion of the board of county commissioners."

CHAPTER 31A

ELECTRIFICATION

Art. 1. Rural Electrification Authority

§ 1694(1). Rural Electrification Authority created; appointment; terms of members.

For an analysis of this chapter, see 13 N. C. Law Rev., No. 4, pp. 382, 383.

Art. 2. Electric Membership Corporations

§ 1694(28). Article complete in itself and controlling.

See the note to § 1037(d) in this Supplement.

CHAPTER 32

ELECTRIC, TELEGRAPH, AND POWER COMPANIES

Art. 1. Acquisition and Condemnation of Property

§ 1698. Grant of eminent domain; exception as to mills and waterpowers.

Cited in Blevins v. Northwest Carolina Utilities, 209 N. C. 683, 184 S. E. 517, opinion of Clarkson, J.

CHAPTER 33

EMINENT DOMAIN

Art. 1. Right of Eminent Domain

§ 1706. By whom right may be exercised.—The right of eminent domain may, under the provisions of this chapter, be exercised for the purpose of constructing their roads, canals, pipe lines originating in North Carolina for the transportation of petroleum products, lines of wires, or other works, which are authorized by law and which involve a public use or benefit, by the bodies politic, corporation, or persons following:

1. Railroads, street railroads, plankroad, tramroad, turnpike, canal, pipe lines originating in North Carolina for the transportation of petroleum products, telegraph, telephone, electric power or lighting, public water supply, flume, or incorporated bridge companies.

(1937, c. 108, s. 1.)

See 15 N. C. Law Rev., No. 4, p. 362.

Editor's Note.—The 1937 amendment inserted the reference to pipe lines in the first sentence of this section, and also in subsection 1. The rest of the section, not being affected by the amendment, is not set out. See § 3542(d) and note thereto.

Art. 2. Condemnation Proceedings

§ 1715. Proceedings when parties cannot agree.

Proceeding Governed by Same Rules Laid Down for Civil Actions.—As a proceeding to condemn land under statutory power is a special proceeding and is so denominated by this section, the requirements of § 752 that, "except as otherwise provided," special proceedings shall be governed by the same rules laid down for civil actions are applicable thereto. Nantahala Power, etc., Co. v. Whiting Mfg. Co., 209 N. C. 560, 561, 184 S. E. 48.

Cited in Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513.

§ 1716. Petition filed; contains what; copy served.

Plaintiff Entitled to Recovery Where Evidence Is Insufficient to Show Taking Was for Private Purpose.—Where there is no evidence upon the record showing that the taking over of a road was for a private purpose sufficient to raise an issue of fact, the plaintiff is remitted to his rights under this section and § 3846(bb) for the recovery of just compensation. Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513.

§ 1723. Exceptions to report; hearing; appeal; when title vests; restitution.

The title of the landowner is not divested until final confirmation and the payment in full of the amount appraised. Nantahala Power, etc., Co. v. Whiting Mfg. Co., 209 N. C. 560, 562, 184 S. E. 48. See § 1730 and note.

If Value of Land Is Not Paid within Year the Right to Condemn Ceases.—After final judgment fixing petitioner's rights to condemn, and the value of the land, if the appraised value of the land be not paid within one year, the petitioner's right to take the property shall end, and the petitioner or claimant shall not be liable for the consideration (value of the land). Nantahala Power, etc., Co. v. Whiting Mfg. Co., 209 N. C. 560, 562, 184 S. E. 48.

And Petitioners Are Liable for Costs.—This section contemplates that in the event, for any reason, the condemnation proceedings are not carried through, all the costs of the proceeding, except the appraised value of the land, shall be paid by the petitioners. Nantahala Power, etc., Co. v. Whiting Mfg. Co., 209 N. C. 560, 563, 184 S. E. 48.

§ 1729. Court may make rules of procedure in.

Quoted in Nantahala Power, etc., Co. v. Whiting Mfg. Co., 209 N. C. 560, 184 S. E. 48.

§ 1730. Change of ownership pending proceeding.

The right to convey the land is not affected by the mere filing of condemnation proceedings, nor by appraisal without confirmation and payment, as all rights would pass to the grantee. Nantahala Power, etc., Co. v. Whiting Mfg. Co., 209 N. C. 560, 562, 184 S. E. 48, citing Livermon v. Roanoke, etc., R. Co., 109 N. C. 52, 13 S. E. 734; Beal v. Durham, etc., R. Co., 136 N. C. 298, 48 S. E. 674.

CHAPTER 34

ESTATES

§ 1734. Fee tail converted into fee simple.

III. APPLICATION AND ILLUSTRATIVE CASES.

Devise to Daughter and Her "Bodily Heirs" Creates Fee-Simple Estate in Daughter.—A devise to testator's daughter and her bodily heirs, and if she dies without bodily heirs, then in trust for the heirs of testator's sisters, is held to create a fee-simple estate in the daughter, defeasible upon her dying without children or issue, it being apparent that the words "bodily heirs" used in the devise meant children or issue, as otherwise the limitation over to the heirs of testator's sisters would be meaningless. Murdock v. Deal, 208 N. C. 754, 182 S. E. 466.

§ 1737. Limitations on failure of issue.

Where father devised the land in question to plaintiff "to be hers and to her heirs, if any, and if no heirs, to be equally divided with my other children," and at the time plaintiff executed deed to defendant, which was refused by him, plaintiff was married, but had been abandoned by her husband, and had no children, it was held that the plaintiff's deed did not convey the indefeasible fee to the land free and clear of the claims of all persons, whether the limitation over be regarded as a limitation over on failure of issue, or as not coming within the rule in Shelley's case. Hudson v. Hudson, 208 N. C. 338, 180 S. E. 597.

§ 1740. Possession transferred to use in certain conveyances.

Rule That Beneficial Use Is Converted into Legal Ownership Does Not Apply to Active Trusts.—While this section converts the beneficial use into the legal ownership and unites the legal and equitable estates in the beneficiary, this rule applies only to passive or simple trusts and not to active trusts. Chinnis v. Cobb, 210 N. C. 104, 108, 185

S. E. 638, citing *Lee v. Oates*, 171 N. C. 717, 88 S. E. 889; *Patrick v. Beatty*, 202 N. C. 454, 163 S. E. 572.

An active trust is one where there is a special duty to be performed by the trustee in respect to the estate, such as collecting the rents and profits, or selling the estate, or the execution of some particular purpose. *Chinnis v. Cobb*, 210 N. C. 104, 108, 185 S. E. 638, citing *Perkins v. Brinkley*, 133 N. C. 154, 45 S. E. 541.

§ 1742. Spendthrift trusts.

Spendthrift Trust Held to Be an Active Trust as to Corpus of Estate.—A spendthrift trust directing the trustee to collect the rents and profits and pay same over to the beneficiary is an active trust so far as the corpus of the estate is concerned, upon which § 1740 does not operate to unite the beneficial and legal interests. *Chinnis v. Cobb*, 210 N. C. 104, 185 S. E. 638.

Trustee May Defend Action without Appearance of the Cestui.—The trustee of a spendthrift trust may defend an action seeking to attach the interest of the cestui que trust, both in the Superior Court and in the Supreme Court on Appeal, without the appearance of the cestui, the preservation and protection of the property being incumbent upon him under the terms of the trust. *Chinnis v. Cobb*, 210 N. C. 104, 185 S. E. 638.

The interest of the cestui que trust in a spendthrift trust is not subject to attachment under § 798 et seq., since by express provision of this section the property is not liable for the debts of the cestui que trust in any manner. *Chinnis v. Cobb*, 210 N. C. 104, 185 S. E. 638.

§ 1743. Titles quieted.

II. NATURE AND SCOPE.

B. Interest Necessary to Bring Action.

Remedy Given Whether in or Out of Possession.

In accord with original. See *Vick v. Winslow*, 209 N. C. 540, 183 S. E. 750.

§ 1744. Remainders to uncertain persons; procedure for sale; proceeds secured.

I. GENERAL CONSIDERATION.

Purpose of Section.

In accord with first paragraph of original. See *Lancaster v. Lancaster*, 209 N. C. 673, 184 S. E. 527.

II. ACTIONS IN SUPERIOR COURT FOR SALE.

When Action Abates.—An action against a contingent remainderman to sell the lands under this section, abates upon the death of the remainderman prior to the termination of the life estate when his limitation over is made to depend upon his surviving the life tenant. *Redden v. Toms*, 211 N. C. 312, 190 S. E. 490.

III. SALE AND REINVESTMENT.

A. General Rules and Incidents Governing.

Where Commissioner's Authority Was Limited to Sale of Property and Distribution of Proceeds.—Where a commissioner was authorized by the court to sell part of the lands of an estate for reinvestment under the provisions of this section, and there were no restrictions in regard to the use of the property of the estate, and in the commissioner's report and recommendation of the offer to purchase no authority to restrict the use of the property was asked, and none granted in the order of the court, it was held that the commissioner was without authority to insert restrictions in the deed to the purchaser, his authority being limited under the order of the court to the sale of the property and the distribution of the proceeds of sale. *Southern Real Estate Loan, etc., Co. v. Atlantic Refining Co.*, 208 N. C. 501, 181 S. E. 633.

CHAPTER 35

EVIDENCE

Art. 5. Life Tables

§ 1790. Mortuary tables as evidence.

Editor's Note.—The mortality table set forth in this section should show the expectancy of life at age ten as 48.7 instead of 43.7 as printed in the Consolidated Statutes and in the Code of 1935.

Tables Not Conclusive.

In accord with original. See *Wachovia Bank, etc., Co. v. Atlantic Greyhound Lines*, 210 N. C. 293, 186 S. E. 320; *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631.

§ 1791. Present worth of annuities.

Applicable Only to Annuities.

In accord with original. See *Brown v. Lipe*, 210 N. C. 199, 185 S. E. 681.

Art. 6. Competency of Witnesses

§ 1792. Witness not excluded by interest or crime.

Applied in *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

§ 1793. Parties competent as witnesses.

Testifying against Co-Defendant.

In accord with original. See *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

Instructions Not to Incriminate Himself.

In accord with original. See *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

Testimony of an Accomplice.—An accomplice may not testify on direct examination to facts tending to incriminate defendant and at the same time refuse to answer questions on cross-examination relating to matters embraced in his examination-in-chief, and where he refuses to answer relevant questions on cross-examination on the ground that his answers might tend to incriminate him, it is error for the court to refuse defendant's motion that his testimony-in-chief be stricken from the record, the refusal to answer the questions on cross-examination rendering the testimony-in-chief incompetent. *State v. Perry*, 210 N. C. 796, 188 S. E. 639. See Const., Art. I, sec. 11.

§ 1794. Parties competent as witnesses in certain cases.

Applied in *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

§ 1795. A party to a transaction excluded, when the other party is dead.

I. GENERAL CONSIDERATION.

Province of Court to Decide What Testimony May "Come In."—When a personal representative "opens the door" by testifying to a transaction, it is not in his province, but that of the court, to decide what testimony favorable to the adverse party may "come in." *Mansfield v. Wade*, 208 N. C. 790, 796, 182 S. E. 475, citing *Herring v. Ipock*, 187 N. C. 459, 121 S. E. 758.

Neither Husband nor Wife Is an Interested Party.—Where husband and wife instituted separate suits to recover, each respectively, for personal services rendered by them to defendant's testate, it was held that each was competent to testify for the other, since neither had a direct pecuniary interest in the action of the other, and was not therefore an interested party in the other's action within the meaning of this section, the testimony not being as to a transaction between the witness and the deceased, but between a third party and deceased. *Burton v. Styers*, 210 N. C. 230, 186 S. E. 248.

It has been consistently held by this court that the prohibition against the testimony of a "person interested in the event" extends only to those having a "direct legal or pecuniary interest," and not to the sentimental interest the husband or wife would naturally have in the lawsuit of the other. *Burton v. Styers*, 210 N. C. 230, 231, 186 S. E. 248, citing *Hall v. Holloman*, 136 N. C. 34, 48 S. E. 515; *Helsabeck v. Doub*, 167 N. C. 205, 83 S. E. 241, L. R. A. 1917A, 1; *Vannoy v. Stafford*, 209 N. C. 748, 184 S. E. 482. See § 1801 and note.

The Same Being True of Attorney Formerly Holding Note for Collection.—An attorney formerly holding a note for collection is not an interested party in an action on the note within the meaning of this section, prohibiting testimony by interested parties as to transactions with or declarations of a decedent. *Vannoy v. Stafford*, 209 N. C. 748, 184 S. E. 482.

And of Draftsman Who Failed to Insert Reversionary Clause in Deed.—In an action for reformation of a deed to a county board of education for mistake of the draftsman in failing to insert a reversionary clause therein in accordance with the agreement between the grantors and grantee, testimony of the draftsman relating to declarations of a deceased member of the board and of the superintendent of schools, tending to show that it was agreed that the reversionary clause should be inserted, was held not precluded by this section, the draftsman not being a party in-

interested in the event as contemplated by the statute. *Ollis v. Board of Education*, 210 N. C. 489, 187 S. E. 772.
Applied in *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

IV. SUBJECT MATTER OF THE TRANSACTION.

Will Cases.—

Under this section a party interested in the result of the action is incompetent to testify to declaration of the deceased, whose will is under attack, when the issue is as to undue influence. In *re Will of Plott*, 211 N. C. 451, 190 S. E. 717.

§ 1798. Communications between physician and patient.

What Information Included.—

In accord with original. See *Creech v. Sovereign Camp*, W. O. W., 211 N. C. 658, 191 S. E. 840.

Privilege May Be Waived.—

In accord with original. See *Creech v. Sovereign Camp*, W. O. W., 211 N. C. 658, 191 S. E. 840.

Judge's Finding of Record That Testimony Necessary.—

In accord with original. See *Creech v. Sovereign Camp*, W. O. W., 211 N. C. 658, 191 S. E. 840.

§ 1799. Defendant in criminal action competent but not compellable to testify.

Cross Reference.—For article discussing the limits to self-incrimination, see 15 N. C. Law Rev., No. 3, p. 229.

Proper Instruction.—The court's remarks to the jury in instructing them that defendant was within his rights in not testifying, and that his failure to testify should not be considered against him, were held without error upon defendant's exception. *State v. Horne*, 209 N. C. 725, 184 S. E. 470.

Applied in *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

Cited in *State v. Vernon*, 208 N. C. 340, 180 S. E. 590.

§ 1801. Husband and wife as witnesses in civil actions.

Cross Reference.—For note on privileged communications between husband and wife, see 15 N. C. Law Rev., No. 3, p. 282.

Section Does Not Render Voluntary Disclosure Incompetent.—This section means that neither shall be compelled to disclose any such confidential communication, but does not perform render a voluntary disclosure thereof incompetent. *Hagedorn v. Hagedorn*, 211 N. C. 175, 178, 189 S. E. 507, citing *Nelson v. Nelson*, 197 N. C. 455, 149 S. E. 585.

Applied in *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

§ 1802. Husband and wife as witnesses in criminal actions.

Applied in *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

Art. 7. Attendance of Witness

§ 1807. Witnesses attend until discharged; effect of nonattendance.

Applied in *State v. Perry*, 210 N. C. 796, 188 S. E. 639, dissenting opinion.

Art. 7A. Attendance of Witnesses from without State

§ 1808(1). Definitions.—"Witness" as used in this article shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness. (1937, c. 217, s. 1.)

See 15 N. C. Law Rev., No. 4, p. 345.

§ 1808(2). Summoning witness in this state to testify in another state.—If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies, under the seal of such court, that there is a crim-

inal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced, or is about to commence, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing, being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. (1937, c. 217, s. 2.)

§ 1808(3). Witness from another state summoned to testify in this state.—If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying the

number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. (1937, c. 217, s. 3.)

§ 1808(4). Exemption from arrest and service of process.—If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not, while in this state pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state, or while returning therefrom, he shall not while so passing through this state be subject to arrest or the services of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. (1937, c. 217, s. 4.)

§ 1808(5). Uniformity of interpretation.—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. (1937, c. 217, s. 5.)

§ 1808(6). Title of article.—This article may be cited as "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings." (1937, c. 217, s. 6.)

Art. 8. Depositions

§ 1821. When deposition may be read on the trial.

Selected Parts.—

In accord with original. See *Enloe v. Charlotte Coca-Cola Bottling Co.*, 210 N. C. 262, 186 S. E. 242.

CHAPTER 36

FENCES AND STOCK LAW

Art. 3. Stock Law

§ 1841. Term "stock" defined.

Editor's Note.—For act to place certain portions of Onslow county under stock law, see Public Laws 1933, c. 151, amended by Public Laws 1937, c. 356. For act relating to Currituck county, see Public Laws 1937, c. 389. For act relating to portions of Dare county, see Public Laws 1937, c. 213.

§ 1850. Impounding stock at large in territory.

Applied in *Beasley v. Edwards*, 211 N. C. 393, 190 S. E. 221.

§ 1851. Owner notified; sale of stock; application of proceeds.

Where a party lawfully impounds a sow, sells same under provisions of a recorder's judgment, and pays himself his lawful fees for impounding the sow and his damages caused by the sow, and pays to the owner the amount due him out of the purchase price, the owner may not complain. *Beasley v. Edwards*, 211 N. C. 393, 190 S. E. 221.

§ 1864. Local: Depredations of domestic fowls in certain counties.

Editor's Note.—Public Laws 1937, c. 122, made the provisions of this section, relating to depredations of domestic fowls, applicable to the county of Wilson.

CHAPTER 37

FISH AND FISHERIES

SUBCHAPTER III. FISH OTHER THAN SHELLFISH

Art. 9. Commercial Fishing; General Regulations

§ 1965(a). Fishing with nets, etc., by non-residents prohibited.—It shall be unlawful for any person, firm or corporation, which has not been a bona fide resident of the state for twelve months continuously, next preceding the date on which the fishing shall commence, to use or cause to be used in the waters of the state, which shall include the distance of three nautical miles, measured from the outer beaches or shores of the state of North Carolina out and into the waters of the Atlantic Ocean, any seines, trawls or nets of any kind for the purpose of taking fish for sale or exportation. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, for the first offense shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or imprisoned for not less than six months nor more than twelve months, or both in the discretion of the court. And for any subsequent conviction for a violation of this section such defendant shall be fined not less than one thousand dollars (\$1,000.00) nor more than two thousand dollars (\$2,000.00), or imprisoned for not less than twelve months nor more than two years in the discretion of the court.

The finding by the fisheries commissioner, or any of his duly authorized agents, of any vessel, boat, or other craft within the distance of three nautical miles, as defined in this section, having any seines, trawls, or nets of any kind or a similar device aboard with fresh or live fish on deck or in the hold thereof or in any portion of the said vessel, boat, or craft, shall be prima facie evidence that the operator or operators and masters and members of the crew of said vessel, boat, or other craft are guilty of a violation of this section.

It shall be the duty of the fisheries commissioner whenever he has reasonable grounds to believe that this section is being violated in any particular place, to go himself or send a duly authorized deputy to such place and such officer finding that the provisions of this section are being violated is hereby authorized and empowered to seize and remove all nets, machinery, or other

appliances or paraphernalia being used in violation of this section, and to sell the same at public auction, after advertisement for ten days at the court house door in the county in which the seizure was made, or in which the seized property is taken under the provisions of this section, and apply the proceeds from said sale, first to payment of costs and expenses of such sale and removal, and pay the balance of said proceeds remaining, if any, to the school fund of the county in which or nearest to where the offense is committed.

Such fisheries commissioner, or his authorized deputy, is further authorized and empowered to seize any boat, vessel or ship of any kind or nature, used in thus violating the law, and to bring the same into the nearest port in said state having sufficient depth of water to properly accommodate such boat, vessel or ship so seized. Such boat, vessel or ship so found being used contrary to the provisions of this statute, shall be forfeited to the state and the said fisheries commissioner is hereby authorized, empowered and directed to institute proceedings for the purpose of condemning and selling such boat, vessel or ship, in the name of the state, in the superior court in the county in which such seized boat, vessel or ship is taken under the provisions of this act. The owner of such boat may execute and deliver to the fisheries commissioner a bond, with adequate security, not less than the value of such boat, conditioned to return said boat to the custody of said fisheries commissioner, if upon the trial of the cause in the superior court as aforesaid it should be determined that the said boat was forfeited.

This authority to seize the said boat, under the circumstances hereinbefore detailed, shall in no way affect the liability of the owners and those operating the boat and thus using it in fishing, to be prosecuted for the misdemeanor hereinbefore defined. Provided, nothing contained in this section shall be construed to prevent any person, firm or corporation, which has been a bona fide resident of the state of North Carolina for twelve months continuously next preceding the date on which the fishing shall commence from employing non-resident employees in connection with fishing as authorized by law. (1931, c. 36, s. 1; 1937, c. 261.)

Editor's Note.—The 1937 amendment struck out the last sentence of the first paragraph and inserted the present last two sentences in place thereof. It also inserted the second paragraph, and omitted a provision as to compromise with boat, etc., owner for violation of section formerly appearing in the present fourth paragraph.

Art. 10. Commercial Fishing; Local Regulations

Part 2. Streams

§ 2005. Lumber river and waters of Robeson, Columbus, Hoke, and Scotland: Fishing regulated.

Editor's Note.—For act relating to Columbus county, see Public-Local Laws 1917, c. 394.

CHAPTER 38

GAME LAWS

Art. 4. Close Season for Game

§ 2110. Foxes.

Editor's Note.—For act relating to close season in Anson county, see Public-Local Laws 1929, c. 244.

N. C. Supp.—4

Art. 6. Local Hunting Laws

§ 2141(c) 1. Minimum penalty for violating game and inland fishing laws.—Any person, persons, firm, partnership, or corporation who is adjudged by any court of competent jurisdiction guilty of violating any law, lawful order, rule or regulation relative to hunting, trapping, or fishing shall upon conviction of the first offense be fined not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars or imprisoned for not more than thirty days for each and every offense.

The provisions of this section shall apply only to the counties of Beaufort, Buncombe, Gaston, Granville, Lincoln, and Mecklenburg. (1937, c. 352, ss. 1, 2.)

Art. 7. North Carolina Game Law of 1927 as Amended

§ 2141(l). Powers of commission; to acquire land.

Delete Editor's Note appearing under this section in original.—Ed. note.

§ 2141(dd). License required.

Editor's Note.—Public Laws 1937, c. 45, s. 1, applicable only to Northampton county, amended this section by adding thereto: "Provided, it shall be lawful for any person or persons whether a resident or non-resident of the state of North Carolina, to hunt foxes with dogs without procuring a hunting license."

Art. 8. North Carolina Game Law of 1935

§ 2141(1). Title of article.

Editor's Note.—Public Laws of 1935, chapter 486, repealed all inconsistent acts except Public Laws of 1935, Chapter 160, relating to the protection of migratory waterfowl in Currituck sound in Currituck county.

Art. 9. Using Silencer on Firearms

§ 2141(28). Possession of firearm silencer, while hunting game, made unlawful.—It shall be unlawful for any person while hunting game in this state to have in his possession a shotgun, pistol, rifle, or any firearm equipped with a silencer of any type or kind or any device or mechanism designed to silence, muffle, or minimize the report of such firearm, whether such silencer or device or mechanism is separate from or attached to such firearm. (1937, c. 152, s. 1.)

§ 2141(29). Penalty for violation.—If any person shall be convicted of a violation of this article he shall be fined not less than one hundred (\$100.00) dollars or imprisoned not less than sixty days, or both, in the discretion of the court. (1937, c. 152, s. 2.)

CHAPTER 39

GAMING CONTRACTS AND FUTURES

Art. 2. Contracts for "Futures"

§ 2144. Certain contracts as to "futures" void.

Contracts to Which This Section Applies.—

A contract for "cotton futures" in which no actual delivery is intended or contemplated is void and no action may be maintained thereon. *Bodie v. Horn*, 211 N. C. 397, 190 S. E. 236.

CHAPTER 40

GUARDIAN AND WARD

Art. 1. Jurisdiction in Matter of Guardianship

§ 2150. Jurisdiction in clerk of superior court.

Language of Section Confusing.—The language of the pro-

viso at the end of this section is confusing. The clause introduced by the words, "or if" appears by its terms to relate to guardians of infants only. The words, "idiots, lunatics, or inebriates" at the end may have been added by inadvertence. This interpretation is supported by the obvious fact that the designation by an idiot of a guardian should have no effect. 13 N. C. Law Rev., No. 4, p. 387.

Place of Appointment.—

Under this section the appointment of a guardian in a county other than the one in which the ward's surviving parent resides or the ward's estate is situate is void. *Duke v. Johnston*, 211 N. C. 171, 189 S. E. 504.

Art. 2. Creation and Termination of Guardianship

§ 2151. Appointment by parents; effect; powers and duties of guardian.

Father Should Not Be Regarded as Wrongdoer When He Acts in Good Faith with Child's Money.—Since under this section the father is natural guardian for his minor children he should not be regarded as a trespasser or a wrongdoer when he acts in good faith with his child's money and makes purchases for its benefit. *Lifsey v. Bullock*, 11 F. Supp. 728.

§ 2156. Proceedings on application for guardianship.

Failure to Notify Relative of Hearing Does Not Render Appointment of Guardian Void.—While the failure to notify the relatives of an alleged incompetent of the hearing to determine her competency is an irregularity, such irregularity does not render the appointment of a guardian in the proceedings void, but gives the relatives an opportunity to attack such appointment, and where, upon such attack, the court finds upon supporting evidence that the guardian appointed is a fit and suitable person, the relatives are not entitled to the removal of the guardian. *In re Barker*, 210 N. C. 617, 188 S. E. 205.

§ 2157. Letters of guardianship.

The appointment of a guardian can be shown only by the records in the office of the clerk of the Superior Court by whom the appointment was made, or by letters of appointment issued by the clerk as required by this section, and parol evidence tending to show appointment is incompetent. *Buncombe County v. Cain*, 210 N. C. 766, 188 S. E. 399.

Art. 4. Powers and Duties of Guardian

§ 2169. To take charge of estate.

Under this section the guardian can select the forum, as there is no statute to the contrary. *Lawson v. Langley*, 211 N. C. 526, 530, 191 S. E. 229.

Art. 5. Sales of Ward's Estate

§ 2180. Special proceedings to sell; judge's approval required.

Reference.—See § 4103(b) of this Supplement and note thereto.

Presumption That Statutory Requirements Have Been Met.—Although this section must be strictly complied with, where a guardian has applied for permission to mortgage her wards' land, and the clerk has entered an order therefor, which order has been approved by the court, there is a presumption that the statutory requirements have been met. *Quick v. Federal Land Bank*, 208 N. C. 562, 181 S. E. 746.

Where the guardian's application for a loan stated that the proceeds thereof were to be used to purchase live stock necessary to the proper operation of the farm, to erect buildings on the land, and to provide improvements as defined by the Federal Farm Loan Board, it was held that under the presumption that the provisions of this section were followed, the mortgage is valid and binding upon the wards' estate as to the funds used for permanent improvements on the land, but as to the funds used to purchase live stock the mortgage is void as to the wards, such fund not having been used to materially promote their interest, and the mortgage on the wards' estate in remainder to the extent of the proceeds used to purchase live stock should be set aside upon their petition therefor filed upon their coming of age. *Id.*

Petition Signed by Person Not a Qualified Guardian Confers No Jurisdiction on Clerk.—A clerk of the Superior Court has jurisdiction to order the sale of a ward's lands only upon petition verified by the duly appointed and qualified guardian of the ward, and where such petition is filed

and signed by a person purporting to act as guardian, but who had not been appointed guardian and had not qualified by filing bond, the petition confers no jurisdiction on the clerk. *Buncombe County v. Cain*, 210 N. C. 766, 188 S. E. 399.

And in Such Case the Purchaser at Sale Acquires No Title Adverse to Infant.—A purchaser of an infant's property at a sale made under an order which is void because the clerk who made the order had no jurisdiction of the proceeding in which the order was made, acquires no right, title, interest, or estate in said property, adverse to the infant. *Buncombe County v. Cain*, 210 N. C. 766, 775, 188 S. E. 399.

Art. 7. Public Guardians

§ 2193. Powers, duties, liabilities, compensation.

As to money due minor insurance beneficiary, see § 961(a).

Art. 8. Foreign Guardians

§ 2195. Right to removal of ward's personality from state.—Where any ward, idiot, lunatic or insane person, residing in another state or territory, or in the District of Columbia, or Canada, or other foreign country, is entitled to any personal estate in this state, or personal property substituted for realty by decree of court, or to any money arising from the sale of real estate, whether the same be in the hands of any guardian residing in this state, or of any executor, administrator or other person holding for the ward, idiot, lunatic or insane person, or if the same (not being adversely held and claimed) be not in the lawful possession or control of any person, the guardian of the ward, idiot, lunatic or insane person, duly appointed at the place where such ward, idiot, lunatic or insane person resides, or in the event no guardian has been appointed the court or officer of the court authorized by the laws of the state or territory or for the District of Columbia or Canada or other foreign country to receive moneys belonging to any infants, idiots, lunatics or insane persons when no guardian has been appointed for such person, may apply to have such estate removed to the residence of the infant, idiot, lunatic or insane person by petition filed before the clerk of the superior court of the county in which the property or some portion thereof is situated; which shall be proceeded with as in other cases of special proceedings. (Rev., s. 1816; Code, ss. 1598, 1601; R. C., c. 54, s. 29; 1820, c. 1044; 1842, c. 38; 1868-9, c. 201, ss. 35, 38; 1874-5, c. 168; 1913, c. 86, s. 1; 1937, c. 307.)

Editor's Note.—The 1937 amendment made provision for the event "no guardian has been appointed." It also substituted "infant" for "ward" in a subsequent part of the section.

CHAPTER 40A

VETERANS' GUARDIANSHIP ACT

§ 2202(12). Compensation at 5 per cent; additional compensation; premiums on bonds.

Where the clerk entered an order allowing a guardian additional compensation for extraordinary services and the Veterans Administration failed to perfect its appeal from the clerk's order, and thereafter applied to the judge of the Superior Court for a writ of certiorari, the petition for certiorari was denied upon the court's finding of laches and demerit. *In re Snelgrove*, 208 N. C. 670, 182 S. E. 335.

CHAPTER 41

HABEAS CORPUS

Art. 2. Application

§ 2208. To judge of supreme or superior court; in writing.

Sections 463 et seq. concerning venue all refer to "actions"

and have no application to habeas corpus proceedings. *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

Discretionary Power of Judge as to Place Writ Is Returnable Not Reviewed in Absence of Abuse.—Since any judge of the Superior Court or Justice of the Supreme Court has the power to issue a writ of habeas corpus at any time or any place, he has the discretionary power to make the writ returnable at such place as he may determine, which discretion will not be reviewed in the absence of a showing of abuse or failure to afford full opportunity to be heard, and therefore an exception to the refusal of a motion for change of venue of habeas corpus proceedings cannot be sustained. *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

§ 2210. Issuance of writ without application.

Reference.—See note to § 2208 of this Supplement.

Art. 3. Writ

§ 2212. Penalty for refusal to grant.

Cited in *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

Art. 6. Proceedings and Judgment

§ 2235. When party discharged.

Editor's Note.—Delete the line containing the words "State Cannot Appeal.—The State can not appeal from an" immediately preceding the last paragraph in the original.

Art. 7. Habeas Corpus for Custody of Children in Certain Cases

§ 2241. Custody as between parents in certain cases; modification of order.

When Section Applies.—

In accord with second paragraph of original. See *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

When Parents Divorced Section 1664 Applies.—

In accord with original. See *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

Delete the word "excluded" near the end of the last sentence of the paragraph under this catchline and substitute in lieu thereof the word "exclusive."—Ed. note.

Habeas Corpus Not Available Where Divorce Is Granted in Another State Where Parents Resided.—Habeas corpus is not available to determine the custody of a child as between its divorced parents and where the divorce is granted in another state of which the parents were residents, the writ is not available to enforce the provisions of the divorce decree relating to the custody of the child as against the mother moving to this State and bringing the child with her. In *re Ogden*, 211 N. C. 100, 189 S. E. 119.

Findings of Fact Are Conclusive When Based on Evidence.—The findings of fact by the court in proceedings in habeas corpus, to determine the custody of minor children of the parties, are conclusive when based on evidence. *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

§ 2242. Appeal to supreme court.

Decree as between Divorced Parents Is Not Appealable.—A decree in habeas corpus proceedings to determine the custody of a child as between its divorced parents is not appealable, since the proceeding does not come within the provisions of this and § 2241, nor will the provisions made for the child be considered when the judge below finds that the child is in school and is being properly cared for by the parent having its custody, and awards its custody to such parent during the school term, the sole remedy being by certiorari to invoke the constitutional power of the Supreme Court to supervise and control proceedings of inferior courts. In *re Ogden*, 211 N. C. 100, 189 S. E. 119.

CHAPTER 43

INSANE PERSONS AND INCOMPETENTS

Art. 2. Guardianship and Management of Estates of Incompetents

§ 2285. Inquisition of lunacy; appointment of guardian.

The effect of this section is to provide that the proceeding may be commenced by the filing of the petition, and that the inquisition may be held upon the notice therein provided being served upon the alleged incompetent, thereby

dispensing with the necessity of issuing a summons. The notice to an incompetent to appear at a time and place named to present evidence and show cause, if any, why he should not be declared incompetent serves every function of a summons. In *re Barker*, 210 N. C. 617, 620, 188 S. E. 205.

§ 2287. Restoration to sanity or sobriety; effect; how determined.

—When any insane person or inebriate becomes of sound mind and memory, or becomes competent to manage his property, he is authorized to manage, sell and control all his property in as full and ample a manner as he could do before he became insane or inebriate, and a petition in behalf of such person may be filed before the clerk of the superior court of the county of his residence, setting forth the facts, duly verified by the oath of the petitioner [the petition may be filed by the person formerly adjudged to be insane, lunatic, inebriate or incompetent; or by any friend or relative of said person; or by the guardian of said person], whereupon the clerk shall issue an order, upon notice to the person alleged to be no longer insane or inebriate, to the sheriff of the county, commanding him to summon a jury of six freeholders to inquire into the sanity of the alleged sane person, formerly a lunatic, or the sobriety of such alleged restored person, formerly an inebriate. The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same. If the jury find that the person whose mental or physical condition inquired of is sane and of sound mind and memory, or is no longer an inebriate, as the case may be, the said person is authorized to manage his affairs, make contracts and sell his property, both real and personal, as if he had never been insane or inebriate. (Rev., s. 1893; Code, s. 1672; 1901, c. 191; 1903, c. 80; 1879, c. 324, s. 4; 1937, c. 311.)

Editor's Note.—The 1937 amendment inserted in this section the words appearing in brackets.

Art. 3A. Mortgage or Sale of Estates Held by the Entireties

§ 2294(1). Where one spouse or both incompetent; special proceeding before clerk.

For a complete analysis of this article, see 13 N. C. Law Rev., No. 4, p. 376.

Art. 4. Surplus Income and Advancements

§ 2296. Advancement of surplus income to next of kin.

Cited in *re Jones*, 211 N. C. 704, 191 S. E. 511.

Art. 6. Sterilization of Persons Mentally Defective

§ 2304(p). Prosecutors designated; duties.—If the person upon whom the operation is to be performed is an inmate or patient of one of the institutions mentioned in section 2304(m), the executive head of such institution or his duly authorized agent shall act as prosecutor of the case. The county superintendent of public welfare may act as prosecutor or petitioner in instituting sterilization proceedings in the case of any feeble-minded, epileptic, or mentally diseased person who is on parole from a state institution, and in the case of any such person who is an inmate of a state institution, when authorized to do so by the superintendent of such institution.

(1937, c. 243.)

Editor's Note.—The 1937 amendment directed that the sec-

ond sentence above be inserted after the first sentence. The rest of the section, not being affected by the amendment, is not set out.

§ 2304(ff2). **Temporary admission to state hospitals for sterilization.**—Any feeble-minded, epileptic, or mentally diseased person, for whom the eugenics board of North Carolina has authorized sterilization, may be admitted to the appropriate state hospital for the performance of such operation. The order of the eugenics board authorizing a surgeon on the regular or consulting staff of the hospital to perform the operation will be sufficient authority to the superintendent of such hospital to receive, restrain, and control the patient until such time as it is deemed wise to release such patient. All such admissions shall be at the discretion of the superintendent of the state hospital, and in making any agreement with any county or any state institution to perform such operations, the state hospital may collect a fee which shall not be greater than the cost of such operation and the cost of care and maintenance for the duration of the operation and the time required for the patient to recuperate.

The order of the eugenics board and the agreement of the superintendent of the state hospital to admit such patient shall be full and sufficient authority for the prosecutor or the sheriff of the county to deliver such patient to the proper state hospital. (1937, c. 221.)

CHAPTER 44

INTEREST

§ 2305. Legal rate is six per cent.

Insurance Companies Not Authorized to Charge Interest in Excess of Legal Rate.—Section 6291 dealing with loans by insurance companies secured by insurance policies does not authorize insurance companies to charge interest in excess of the legal rate prescribed in this section. Cowan v. Security Life, etc., Co., 211 N. C. 18, 188 S. E. 812.

§ 2306. Penalty for usury; corporate bonds may be sold below par.

I. GENERAL CONSIDERATION.

Where Person Is Not Entitled to Statutory Penalty.—Where a debtor seeks the aid of a court of equity on the ground that his debt is tainted with usury, he may have the usurious element, if any, eliminated from his debt only upon his paying the principal of his debt, with interest at the legal rate. In such case he is not entitled to the benefit of the statutory penalties for usury. Smith v. Bryant, 209 N. C. 213, 215, 183 S. E. 276.

And where there is no evidence that any holder of the note executed by plaintiffs has charged or received interest thereon in excess of six per cent, in an action on the note plaintiffs may not invoke the forfeiture of interest for usury. Id.

And where the creditors of the mortgagor seek to enjoin the foreclosure of a deed of trust on their creditor's property, and pray for an accounting to ascertain the amount of the debt upon allegations that usurious interest was charged thereon, upon sale of the property under orders of the court, the mortgagee is entitled to the principal amount of his debt, plus six per cent interest thereon, since the plaintiffs, seeking equitable relief, must do equity, and the mortgagee is entitled to the amount of the debt, plus the legal interest, unaffected by the forfeiture or penalty for usury. Kenny Co. v. Hinton Hotel Co., 208 N. C. 295, 180 S. E. 697.

The statutory penalty for usury may not be recovered against the payee of notes secured by deed of trust upon evidence showing that a certain sum was paid the trustee in the deed of trust, but not paid to or received by the payee of the notes. Hunter v. McClung Realty Co., 210 N. C. 91, 185 S. E. 461.

Insurance Companies Subject to Penalty.—An insurance company which charges, retains, or receives interest on a loan made by it in this State, to a policyholder or other

person, at a rate in excess of six per centum per annum, is subject to the penalties prescribed by this section notwithstanding the provisions of § 6291 as to the premiums paid on policies. Cowan v. Security Life, etc., Co., 211 N. C. 18, 22, 188 S. E. 812.

II. SUBSTANCE CONTROLS NATURE OF TRANSACTION.

B. Specific Instances.

Sum Paid to Trust Company Held to Be a Reasonable Brokerage Fee.—\$2,600 paid to a trust company for its services in handling ninety \$1,000 bonds bearing interest at the legal rate was held not to constitute usury, but a reasonable brokerage fee. McCubbins v. Virginia Trust Co., 80 F. (2d) 984.

VI. PLEADING AND PRACTICE.

Evidence Properly Submitted to Jury.—Where the plaintiff alleged usury and the defendant contended that the transaction was within the commission for the sale of bonds exception to the usury law it was held that as the evidence was conflicting it was properly submitted to the jury, and was sufficient to support its verdict in plaintiff's favor. Sherrill v. Hood, 208 N. C. 472, 181 S. E. 330.

New Note Must Be in the Nature of a Compromise in Order to Constitute a Waiver of Right to Plead Usury.—A usurious contract is not purged of the usury by the execution of renewals or by a change in the form of the contract, or by the giving of a separate note for the usurious charge, and in order for an agreement as to the total debt and the execution of a new note therefor to constitute a waiver of the right to plead usury, the new amount arrived at must be agreed to by the debtor as just and due the creditor, taking into consideration his claim of usury, and be in the nature of a compromise and settlement and be a novation rather than a renewal. Hill v. Lindsay, 210 N. C. 694, 188 S. E. 406.

Thus where it was found that the parties agreed upon the total amount of the debt after an accounting involving the credit of sums obtained from the sale of collateral given for the debt, but not involving the question of usury, and that the debtor executed a new note for the balance thus arrived at, it was held insufficient to support the court's conclusion of law that the debtor waived the right to claim usury, the transaction being a renewal rather than a novation. Id.

§ 2309. Contracts, except penal bonds, and judgments to bear interest; jury to distinguish principal.

Interest Imposed by Law in Nature of Damages.—A debt draws interest from the date it becomes due, and when interest is not made payable on the face of the instrument, payment of interest will be imposed by law in the nature of damages for the retention of the principal of the debt. Security Nat. Bank v. Travelers' Ins. Co., 209 N. C. 17, 182 S. E. 702.

Facts Not Excusing Payment of Interest by Insurance Company.—Where under the terms of a policy of insurance payment is to be made to the beneficiary immediately upon receipt of due proof of death of insured, the failure of the insurer to make payment until more than a year after receipt of such due proof entitles the beneficiaries to interest on the amount from the date of insurer's receipt of due proof, and payment of interest will not be excused because payment by insurer was delayed by reason of the fact that the trust agreement under which the policy was assigned was changed without notice to insurer by adding an individual trustee, and the fact that the corporate trustee became insolvent before payment and a substituted trustee appointed and insurer did not have notice of such substitution until a much later date, insurer having had the use of the money during the period of delay. Security Nat. Bank v. Travelers' Ins. Co., 209 N. C. 17, 182 S. E. 702.

CHAPTER 45

JURORS

Art. 1. Jury List and Drawing of Original Panel

§ 2312. Jury list from taxpayers of good character.

Editor's Note.—Public Laws 1937, c. 19, applicable only to Ashe county, changed the date for selecting the jury list to the first Monday in March.

Public Laws 1937, c. 200, amended this section by adding the following: "In Ashe county, non-payment of taxes shall

not be a bar to jury service nor prevent the placing of the names of persons otherwise qualified upon the jury list for said county."

§ 2313. Names on list put in box.

Editor's Note.—Public Laws 1937, applicable only to Ashe county changed date for putting names in box to "first Monday in March or a date selected and approved on the first Monday in March."

Applied in *State v. Walls*, 211 N. C. 487, 191 S. E. 232.

§ 2314. Manner of drawing panel for term from box.

Findings That Section Complied with Conclusive.—

In accord with original. See *State v. Walls*, 211 N. C. 487, 191 S. E. 232.

Child Draws Jurors to Prevent Fraud.—The reason for having a child not more than ten years of age to draw the jurors is to prevent fraud in the selection of the jury, so that the law can be administered impartially and without discrimination. The child draws from the jury box the names of all sorts and conditions of men, white and negro persons, Jew and Gentile, who are qualified to serve under the law. A more perfect system could hardly be devised to insure impartiality. *State v. Walls*, 211 N. C. 487, 494, 191 S. E. 232.

Effect of Excluding Negroes from Grand Jury.—The exclusion of all persons of the negro race from a grand jury, which finds an indictment against a negro, where they are excluded solely because of their race or color, denies him the equal protection of the laws in violation of the Constitutions of North Carolina and of the United States. *State v. Walls*, 211 N. C. 487, 494, 191 S. E. 232.

§ 2315. Local modifications as to drawing panel.

In Ashe county twenty-four jurors shall be drawn and summoned for the second week of each civil term of court held in said county. (Rev., s. 1959; 1907, c. 239; Ex. Sess., 1913, c. 4; P. L., 1915, cc. 233, 744, 764; 1921, c. 142; 1923, c. 107, s. 2; 1923, c. 117; 1937, c. 19.)

Editor's Note.—The 1937 amendment added the above paragraph. The rest of the section, not being affected by the amendment, is not set out.

Art. 2. Petit Jurors; Attendance, Regulation and Privileges

§ 2321. Summons to talesmen; their disqualifications.

Instruction of Court Held Not to Be an Order under This Section.—Where upon adjournment the court instructed the sheriff to summon a number of men to act as talesmen in a case proposed to be called for the next day and upon the trial defendants moved that none of the men so summoned and none of the jurors already in the box should serve, but that the jury be selected from bystanders, it was held that the instruction of the court was not an order under this section for talesmen or a special venire, and that the jurors summoned being subject to all the qualifications of talesmen, and defendants having failed to exhaust their respective challenges to the poll, defendants' exceptions to the refusal of their motions could not be sustained. *State v. Anderson*, 208 N. C. 771, 182 S. E. 643.

§ 2329. Exemptions from jury duty.

The clerk of the superior court of each county is hereby empowered to excuse from jury duty any person or persons exempt under subsection one prior to the convening of the term of court for which such person or persons are required to serve as jurors. (1937, c. 151.)

Editor's Note.—The 1937 amendment directed that the above paragraph be added to this section. The rest of the section, not being affected by the amendment, is not set out.

Art. 4. Grand Jurors

§ 2334. Grand juries in certain counties.

Editor's Note.—For act relating to New Hanover county, see Public Laws 1937, c. 77. For act relating to Rowan county, see Public Laws 1937, c. 78. For act relating to

Scotland county, see Public Laws 1924, Ex. Sess., c. 28, amended by Public Laws 1937, c. 372.

Public Laws 1937, c. 20, repealed Public Laws 1935, c. 4, providing for selection of grand jury for Macon county.

§ 2334(b). Same.—In Durham county.—At the first term of court for the trial of criminal cases in Durham county after the first day of July, one thousand nine hundred and twenty-nine, there shall be chosen a grand jury as now provided by law, and the first nine members of said grand jury chosen at said term shall serve for a term of one year, and the second nine members of said grand jury so chosen shall serve for a term of six months, and thereafter at the first regular and not special term of criminal court after the first days of January and July of each year there shall be chosen nine members of said grand jury to serve for a term of one year. (1929, c. 122, s. 1; 1937, c. 21.)

Editor's Note.—The 1937 amendment inserted the words "regular and not special" in the tenth and eleventh lines of this section.

§ 2336. Foreman may administer oaths to witnesses.

Section Directory Merely.—

In addition to the cases treated under this catchline in the original, see *State v. Lancaster*, 210 N. C. 584, 187 S. E. 802.

CHAPTER 46

LANDLORD AND TENANT

Art. 1. General Provisions

§ 2343. Term forfeited for non-payment of rent.

Section Not Applicable Where in the Lease the Lessee Waives All Notice to Vacate.—*Tucker v. Arrowood*, 211 N. C. 118, 119, 189 S. E. 180.

§ 2352. Lessee may surrender, where building destroyed or damaged.

Damage Insufficient to Enable Lessee to Surrender Premises.—*Carolina Mtg. Co. v. Massie*, 209 N. C. 146, 183 S. E. 425.

Art. 3. Summary Ejectment

§ 2365. Tenant holding over may be disposed in certain cases.

V. THE ACTION.

A landlord may institute suit in the Superior Court to eject his tenant, the remedy of summary ejectment before a justice of the peace not being exclusive, and in such action the Superior Court acquires jurisdiction where the defendant denies plaintiff's title, controverts the allegations of tenancy, and pleads betterments. *Bryan v. Street*, 209 N. C. 284, 183 S. E. 366.

§ 2367. Summons issued by justice on verified complaint.

Section Is Not an Exception to Requirement of § 446.—While this section clearly provides that the agent or attorney of the lessor may make the oath in writing required in actions in summary ejectment, it does not provide an exception to the requirement of § 446, that "every action must be prosecuted in the name of the real party in interest." *Choate Rental Co. v. Justice*, 211 N. C. 54, 55, 188 S. E. 609.

§ 2372. Rent and costs tendered by tenant.

Where Tender of Rents Does Not Prevent Forfeiture.—Where the lease provides that the landlord shall have the option to declare the lease void upon failure of lessee to pay rent when due, and waives notice to vacate, lessee may not prevent forfeiture by tendering rents due upon the trial. *Tucker v. Arrowood*, 211 N. C. 118, 189 S. E. 180.

§ 2373. Undertaking on appeal; when to be increased.—Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice;

except in the counties of Iredell, Mecklenburg, Granville, Watauga, Davie, and Swain, upon appeal to the superior court either plaintiff or defendant may demand that the same shall be tried at the first term of said court after said appeal is docketed in said court, and said trial shall have precedence in the trial of all other cases, except the cases of exceptions to homesteads: Provided, that said appeal shall have been docketed at least ten days prior to the convening of said court: Provided, further, that the presiding judge, in his discretion, may take up for trial in advance any pending case in which the rights of the parties or the public require it; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed. (Rev., s. 2008; Code, s. 1772; 1868-9, c. 156, s. 25; 1883, c. 316; 1921, c. 90; Ex. Sess., 1921, c. 17; 1933, c. 154; 1937, c. 294.)

Editor's Note.—The 1937 amendment struck out the word "Craven" formerly appearing in line five of this section.

CHAPTER 48

LIBEL AND SLANDER

§ 2429. Libel against newspaper; notice before action.

Applied in *Harrell v. Goerch*, 209 N. C. 741, 184 S. E. 489.

§ 2430. Effect of publication in good faith and retraction.

Actual Damages Only Where Publication Is Made in Good Faith and There Has Been a Correction.—Where plaintiff's evidence establishes a false publication, and defendant's evidence shows that the publication was made in good faith through error, and that a correction and retraction was published upon defendant's ascertaining the facts, plaintiff is entitled to recover the actual damage sustained by him. *Lay v. Gazette Pub. Co.*, 209 N. C. 134, 183 S. E. 416.

And No Punitive Damages in the Absence of Malice, or Wantonness and Recklessness.—*Lay v. Gazette Pub. Co.*, 209 N. C. 134, 183 S. E. 416.

When Malice May Not Be Inferred by Jury.—Malice may not be inferred by the jury from a false publication when defendant's uncontradicted evidence rebuts the presumption by showing that the publication was made in good faith through error, and that a correction and retraction was published upon defendant's ascertaining the facts. *Lay v. Gazette Pub. Co.*, 209 N. C. 134, 183 S. E. 416.

CHAPTER 49

LIENS

Art. 1. Mechanics', Laborers' and Material-men's Liens

§ 2433. On buildings and property, real and personal.

IV. PROPERTY COVERED.

Lien on Personalty Is Dependent upon Possession.—While this section provides for a lien not only upon buildings and lots, but also upon "any kind of property, real or personal," other sections of the lien law provide the conditions upon which the lien is to come into existence and continue; and in case of personal property the lien is dependent upon possession and cannot be obtained by the filing of notice. *Elk Creek Lbr. Co. v. Hamby*, 84 F. (2d) 144, 147.

§ 2435. On personal property repaired.

The lien provided for by this section is dependent upon possession. *Elk Creek Lbr. Co. v. Hamby*, 84 F. (2d) 144, 147.

§ 2436. Laborer's lien on lumber and its products.

Reason for Enactment of Section.—It was because a lien could not be obtained for labor performed in the manufacture of lumber unless the party claiming it retained possession, that the Legislature enacted this section. *Elk Creek Lbr. Co. v. Hamby*, 84 F. (2d) 144, 147.

Laborer Has No Lien unless He Complies with Section or Retains Possession.—A laborer who engages in the manufacture of lumber has a lien thereon under section 2435, for his just and reasonable charges so long as he retains possession of the lumber. A laborer, even though he does not retain possession, is entitled to a lien for wages for not exceeding thirty days if he gives the notice required by this section. But he obtains no lien unless he complies with this section or unless he retains possession so that he may assert a lien under § 2435. *Elk Creek Lbr. Co. v. Hamby*, 84 F. (2d) 144, 147.

Preferred Lien Only When Section Strictly Complied with.—This section gives to laborers engaged in logging, sawing, etc., a lien on the lumber of their manufacture, which is superior to all other claims thereon, except that of a purchaser for value without notice. It gives this preferred lien, however, only for the wages of not exceeding thirty days labor, and only on condition that the provisions of this section be strictly complied with. *Elk Creek Lbr. Co. v. Hamby*, 84 F. (2d) 144, 146.

Art. 2. Subcontractors', etc., Liens and Rights against Owners

§ 2445. Contractor on municipal building to give bond; action on bond.

Reference.—See 13 N. C. Law Rev., No. 4, p. 368, for an analysis of this section as amended in 1935.

CHAPTER 49 (B)

LOCAL GOVERNMENT ACT—VALIDATION OF INDEBTEDNESS OF UNIT

Art. 1. Local Government Commission and Director of Local Government

§ 2492(50)b. Provisions in bond resolutions set out.

In *Nash v. Board of Com'rs*, 211 N. C. 301, 304, 190 S. E. 475, the provision that the holders or purchasers of said bonds "shall be subrogated to all the rights and powers of the holders of such indebtedness," which said provision was given "the force of contract between the unit and the holders of said bonds," and was incorporated in the ordinance authorizing issuance of the bonds, hence the provision, having the sanction of law, will enter into and become an integral part of the bonds when issued, with contractual force and effect, which may not be impaired by subsequent legislation.

Art. 2. Validation of Bonds, Notes and Indebtedness of Unit

§ 2492(52). "Unit" defined.

Cited in *Castevens v. Stanly County*, 211 N. C. 642, 191 S. E. 739.

§ 2492(55). Test cases testing validity of funding bonds.—

Jurisdiction of all parties defendant may be had by publication of a summons once a week for three successive weeks in some newspaper of general circulation published in each county in which any part of the unit lies, and jurisdiction shall be complete within twenty days after the date of the last publication of such summons in the manner herein provided.

(1937, c. 80.)

Editor's Note.—The 1937 amendment, applicable to proceedings pending or hereafter instituted, substituted the words "date of the last" for the word "full" formerly appearing in the third sentence of this section. The rest of the section, not being affected by the amendment, is not set out.

The action authorized by this and the following four sections is in the nature of a proceeding in rem, and is adversary both in form and in substance. These sections contemplate that issues both of law and of fact may be raised by pleadings duly filed, and that such issues shall be determined by the court. The court has no power by virtue of these sections to validate bonds which are for any reason invalid. It has power only to determine whether or not on the facts as found by the court and under the law applicable to these facts, the bonds are valid. *Castevens v. Stanly County*, 211 N. C. 642, 650, 191 S. E. 739.

Service of Summons by Publication Is Sufficient.—The contention that an owner of taxable property within the unit, or a citizen residing therein, may be deprived of his property, without due process of law, or contrary to the law of the land, by a decree or judgment in the action declaring or adjudging that the bonds and tax to be levied for their payment, are valid, because it is not required by this section that his name shall appear in the summons or in the complaint, or that the summons shall be served on him personally, cannot be sustained. The action is declared by this section to be in the nature of a proceeding in rem. In such case, all persons included within a well defined class may be made parties defendant, and service of summons by publication is sufficient, although such persons are not named in the summons. *Castevens v. Stanly County*, 211 N. C. 642, 651, 191 S. E. 739.

If Published as Required by This Section.—See *Castevens v. Stanly County*, 211 N. C. 642, 651, 191 S. E. 739.

§ 2492(57). Judgment establishing validity of issue.

Section Does Not Estop Taxpayer from Challenging Validity of Bonds.—The contention that by this section an owner of taxable property within the unit, or a citizen residing therein, is estopped from challenging the validity of the bonds and of the tax, without having had an opportunity to be heard, cannot be sustained. No decree or judgment adverse to his rights can be rendered in an action instituted and prosecuted in accordance with the provisions of the statute, until every taxpayer and citizen of the unit has been lawfully served with summons, and until he has had ample opportunity to appear and file such pleadings as he may wish. If he has failed to avail himself of his constitutional rights, which are fully protected by the statute, he has no just ground of complaint that the court will not hear him when he invokes its aid after the decree or judgment has been finally rendered, and others have relied upon its protection. *Castevens v. Stanly County*, 211 N. C. 642, 651, 191 S. E. 739.

§ 2492(59). Levying special tax for proposed issues.

This section and the four preceding sections are not unconstitutional either on the ground that the statute confers nonjudicial functions on the Superior Courts of this state or on the ground that the statute denies due process of law to taxpayers or citizens of a local governmental unit in this state, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or of the 17th section of Article I of the Constitution of North

Carolina. *Castevens v. Stanly County*, 211 N. C. 642, 652, 191 S. E. 739.

CHAPTER 51

MARRIED WOMEN

Art. 1. Powers and Liabilities of Married Women

§ 2506. Property of married woman secured to her.

What Is Sufficient Written Assent to Make Wife's Deed Valid.—Since the deed of the husband conveys no title to his wife's land, but evidences his written assent to her conveyance, upon reason and authority, subscribing his name under seal to her deed, and acknowledging his execution thereof as required by law, is a sufficient written assent to make her deed valid. *Joiner v. Firemen's Ins. Co.*, 6 F. Supp. 103, 104.

§ 2507. Capacity to contract.

I. IN GENERAL.

Effect of Section.—

In accord with original. See *Davis v. Cockman*, 211 N. C. 630, 191 S. E. 322.

IV. THE ACTION FOR BREACH.

Where Specific Performance May Be Decreed.—Since the wife's contracts are valid without the written assent of her husband, and she is liable in damages for a breach thereof, specific performance may be decreed where the husband has subscribed his name under seal to her deed. *Joiner v. Firemen's Ins. Co.*, 6 F. Supp. 103.

§ 2515. Contracts of wife with husband affecting corpus or income of estate.

I. IN GENERAL.

Section Does Not Apply to Confession of Judgment in Favor of Creditors.—A judgment by confession in favor of creditors against a husband and wife is valid and the private examination of the wife is not necessary under this section which is applicable only to contracts between husband and wife. *Davis v. Cockman*, 211 N. C. 630, 191 S. E. 322.

IV. EFFECT OF NONCOMPLIANCE.

Defective Paper Good as Color of Title.—

If such deed is not color of title, it is at least some evidence, under the ancient document rule, to be submitted to the jury on the question of adverse possession for 20 or 30 years. *Owens v. Blackwood Lbr. Co.*, 210 N. C. 504, 184 S. E. 804.

§ 2519. Estate by the curtesy.

Applied in *Caskey v. West*, 210 N. C. 240, 186 S. E. 324.

Art. 3. Free Traders

§ 2530. Abandonment by husband.

Cited in *Hudson v. Hudson*, 208 N. C. 338, 180 S. E. 597.

CHAPTER 52

MILLS

Art. 1. Public Mills

§ 2532. Miller to grind according to turn; tolls regulated.—

Provided, further, that in Northampton, Chowan and Franklin counties it shall be lawful for water mills to take for toll for grinding one-sixth of the Indian corn and wheat, and one-twelfth part for chopping grain of any kind.

(1937, c. 4.)

Editor's Note.—The 1937 amendment inserted the word "Chowan" in the second proviso. The rest of the section, not being affected by the amendment, is not set out.

For act applying only to Sampson county, see *Public Laws* 1937, c. 164.

CHAPTER 53

MONOPOLIES AND TRUSTS

§ 2559. Combinations in restraint of trade illegal.

Monopoly Defined.—"A monopoly consists in the ownership or control of so large a part of the market supply or output of a given commodity as to stifle competition, restrict the freedom of commerce, and give the monopolist control over prices." *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 747, 188 S. E. 412, quoting *Black's Law Dictionary* (3d Ed.), p. 1202.

In the modern and wider sense monopoly denotes a combination, organization, or entity so extensive and unified that its tendency is to suppress competition, to acquire a dominance in the market, and to secure the power to control prices to the public harm with respect to any commodity which people are under a practical compulsion to buy. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 747, 188 S. E. 412, citing *Massachusetts v. Dyer*, 243 Mass. 472, 138 N. E. 296.

Stated in *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

§ 2563. Particular acts defined.

The violation of this section is made criminal by § 2564, and as ordinarily the violation of a criminal statute may not be enjoined, individuals who apprehend injury by such violation are afforded a remedy by indictment and prosecution under § 395(2). *Carolina Motor Service v. Atlantic Coast Line R. Co.*, 210 N. C. 36, 185 S. E. 479, 104 A. L. R. 1165.

The provisions of the monopoly statutes apply to railroads just as they do to individuals and other corporations. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 482, 191 S. E. 240.

Subdivision three sufficiently defines the offense therein prohibited and is constitutional. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

Coal Dealers Held to Be Competent Witnesses.—Where in the prosecution for violation of subdivision three of this section the State was allowed to introduce the testimony of coal dealers in the same city as to the cost of handling coal, the opinion testimony being based upon complicated and detailed facts relating to costs of buying, shipping, trucking, handling, shrinkage, labor, repairs, etc., the witnesses having had years of experience in operating their respective businesses in the city, it was held that the witnesses were experts and their opinion testimony was competent and was properly received in evidence. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

Proper Instruction as to Injuring or Destroying Competitors.—In a prosecution for violating this section relating to monopolies, an instruction that a person violates this section if he lowers the price of the product in question for the purpose of injuring or destroying competitors, and then, after competition is removed, he sells at a higher price to the detriment of the public, was held without error. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

"Willful" Defined.—That willful means the wrongful doing of an act without justification or excuse, was held a correct definition. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

Combination of Railroads to Eliminate Motor Truck Competition.—A combination of railroads for the purpose of reducing rates on gasoline transportation within a certain area with the intent to eliminate motor truck competition and with the further purpose of raising and fixing a higher rate on the same commodity after the elimination of competition is a violation of this section. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

Cited in *Brown v. Norfolk So. R. Co.*, 208 N. C. 423, 181 S. E. 279.

§ 2564. Violation a misdemeanor; punishment.

Reference.—See § 2563 in this Supplement.

Applied in *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

Cited in *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

§ 2566. Continuous violations separate offenses.

Quoted in *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

§ 2574. Civil action by person injured; treble damages.

Causal Relation Between Violation and Injury Must Be Shown.—

In accord with original. See *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

Who May Bring Action.—The contention that an action for the violation of this chapter resulting in injury to a party's business can only be brought by the attorney general is contrary to the provisions of this section. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

CHAPTER 54

MORTGAGES AND DEEDS OF TRUST

Art. 2. Right to Foreclose or Sell under Power

§ 2578. Representative succeeds on death of mortgagee or trustee in deeds of trust; parties to action.

Cited in *Nall v. McConnell*, 211 N. C. 258, 190 S. E. 210.

§ 2583. Clerk appoints successor to incompetent trustee.

Cited in *New York Life Ins. Co. v. Lassiter*, 209 N. C. 156, 183 S. E. 616; *Nall v. McConnell*, 211 N. C. 258, 190 S. E. 210.

§ 2583(a). Substitution of trustees in mortgages and deeds of trust.

A sale of the property by the substituted trustee in accordance with the terms of the instrument is valid, the appointment of a substitute trustee not being a conveyance of any interest in land. *North Carolina Mtg. Corp. v. Morgan*, 208 N. C. 743, 182 S. E. 450.

Substitute Trustee May Execute Deed to Purchaser.—A trustee, duly substituted for the original trustee under the provisions of the deed of trust and the statute, may execute deed to the purchaser at a sale duly conducted by the original trustee. *Pendergrast v. Home Mtg. Co.*, 211 N. C. 126, 189 S. E. 118.

Cited in *New York Life Ins. Co. v. Lassiter*, 209 N. C. 156, 183 S. E. 616.

Art. 3. Mortgage Sales

§ 2588. Real property; notice of sale must describe premises.

Same—Sufficient Description.—

In accord with original. See *Blount v. Basnight*, 209 N. C. 268, 183 S. E. 405.

§ 2591. Reopening judicial sales, etc., on advanced bid.

Title of the Bidder.—In accord with original. See *Richmond County v. Simmons*, 209 N. C. 250, 183 S. E. 282.

Where a resale is ordered the bidder at the first sale is released from any and all obligation by reason of his bid. *Richmond County v. Simmons*, 209 N. C. 250, 251, 183 S. E. 282.

Cited in *Dennis v. Dixon*, 209 N. C. 199, 183 S. E. 360.

§ 2593(b). Injunction of mortgage sales on equitable grounds.

Requiring Bond within Court's Discretion.—

In accord with original. See *Little v. Wachovia Bank, etc., Co.*, 208 N. C. 726, 182 S. E. 491.

Where It Is Error for Court to Grant Motion to Nonsuit.

—Where plaintiffs, trustors in a deed of trust, seek to enjoin the consummation of a foreclosure sale had under the power contained in the instrument, and alleged that the price bid at the sale was grossly inadequate, which allegation is denied in the answer, it is error for the court to grant defendants' motion to nonsuit, plaintiffs being entitled to a hearing and a determination of the issue under the provisions of this section. *Smith v. Bryant*, 209 N. C. 213, 183 S. E. 276.

Injunction Held to Be Properly Continued to Hearing upon Court's Finding.—Where a mortgagor or trustor institutes suit to enjoin the consummation of a foreclosure sale had under the terms of the instrument, and files bond to indemnify the mortgagee or cestui que trust against loss, the temporary injunction granted in the cause is properly continued to the hearing upon the court's finding that serious controversy exists between the parties and that plaintiff is entitled to a jury trial upon the issues of fact raised by the pleadings. *Little v. Wachovia Bank, etc., Co.*, 208 N. C. 726, 182 S. E. 491. See § 861 and note.

Where Court Determines Whether Bid Was Grossly In-

adequate.—Where, in a suit to enjoin the consummation of a foreclosure sale the issue of whether the bid at the sale was grossly inadequate is raised by the pleadings, the parties are not entitled as a matter of law to have the issue determined by a jury, but the court may hear evidence and determine the issue, and should dismiss the action if it finds that the amount of the bid is the fair value of the land, or should enjoin the consummation of the sale if it finds that the bid is grossly inadequate. *Smith v. Bryant*, 209 N. C. 213, 183 S. E. 276.

Stated in *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 300 U. S. 124, 57 S. Ct. 338.

Cited in *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 185 S. E. 482.

§ 2593(c). Ordering resales before confirmation; receivers for property; tax payments.

Stated in *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 300 U. S. 124, 57 S. Ct. 338.

Cited in *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 185 S. E. 482.

§ 2593(d). Right of mortgagee to prove in deficiency suits reasonable value of property by way of defense.

This section is constitutional and valid. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 185 S. E. 482.

This section has merely restricted the exercise of the contractual remedy to provide a procedure which, to some extent, renders the remedy by a trustee's sale consistent with that in equity. This does not impair the obligation of the contract. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 300 U. S. 124, 131, 57 S. E. 338.

It applies only to foreclosure under powers of sale and not to actions to foreclose, and only instances where the creditor bids in the property, directly or indirectly, and not to instances where the property is bid in by independent third persons. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 185 S. E. 482. See also, *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 300 U. S. 124, 130, 57 S. Ct. 338.

And alters and modifies one of the existing remedies for realization of the value of the security, but cannot fairly be said to do more than restrict the mortgagee to that for which he contracted, namely, payment in full. It recognizes the obligation of his contract and his right to its full enforcement but limits that right so as to prevent his obtaining more than his due. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 300 U. S. 124, 130, 57 S. Ct. 338.

It is not "emergency legislation," nor is its purpose to provide a "moratorium" for debtors during a temporary period of depression. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 34, 185 S. E. 482.

Amount Bid Is Not Conclusive as to Value.—The amount bid by the creditor at the sale, and applied by him as a payment on the debt, is not conclusive as to the value of the property. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 34, 185 S. E. 482.

This section recognizes the obligation of a debtor who has secured the payment of his debt by a mortgage or deed of trust to pay his debt in accordance with his contract, and does not impair such obligation. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 34, 185 S. E. 482.

And it recognizes the validity of powers of sale contained in mortgages or deeds of trust, but regulates the exercise of such powers by the application of well settled principles of equity. It provides for judicial supervision of sales made and conducted by creditors whose debts are secured by mortgages or deeds of trust, and thereby provides protection for debtors whose property has been sold and purchased by their creditors for a sum which was not a fair value of the property at the time of the sale. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 35, 185 S. E. 482.

§ 2593(e). Conflicting laws repealed; not applicable to tax suits.

Cited in *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 300 U. S. 124, 57 S. Ct. 338.

§ 2593(f). Deficiency judgments abolished where mortgage represents part of purchase price.

Cited in footnote to *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. Ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 300 U. S. 124, 57 S. Ct. 338.

CHAPTER 55

MOTOR VEHICLES

Art. 1. General Provisions

§ 2598. Terms defined.

Applied in *Kelly v. Hunsucker*, 211 N. C. 153, 189 S. E. 664.

Art. 3. License Fees

§ 2612. Amount of license fees.

Cited in *Taft v. Maryland Cas. Co.*, 211 N. C. 507, 191 S. E. 10.

Art. 3A. Gasoline Tax

§ 2613(i15). Fuels purchased for farm tractors, motor boats and manufacturing processes entitled to rebates.—Any person, association, firm, or corporation, who shall buy in quantities of ten gallons or more at any one time any motor fuels as defined in this article for the purpose of use, and the same is actually used, for a purpose other than the operation of a motor vehicle designed for use upon the highways, on which motor fuels the tax imposed by this article shall have been paid, shall be reimbursed at the rate of five cents per gallon of the amount of such tax or taxes paid under this article [Provided, however, that motor vehicles designed but not used upon the highways of this state shall be entitled to the refund of gasoline tax as herein provided], upon the following conditions and in the following manner:

(1937, c. 111.)

Editor's Note.—The 1937 amendment inserted the words in brackets in the first sentence. The rest of the section, not being affected by the amendment, is not set out.

Art. 3B. Motor Busses

§ 2613(j). Definitions.—

(k) The term "motor vehicle carrier" means every corporation or person, as the term "corporation" and the term "person" are hereinbefore defined, or their lessees, trustees or receivers owning, controlling, operating or managing any motor vehicle used in the business of transporting persons or property for compensation between cities, or between towns, or between cities and towns, or over a regular route, over the public highways of the state, as public highways are defined herein.

(r) The term "broker" means any person not included in the term "motor vehicle carrier" and not a bona fide employee or agent of any such carriers, who or which as principal or agent sells or offers for sale any transportation, or negotiates for or holds himself, or itself, out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

(s) The term "forwarder" means any person not included in the terms "motor vehicle carrier" or "broker" as herein defined, who or which issues receipts of billings for property received by it for transportation, forwarding, or consolidating or for distribution by any medium of transportation or combination of mediums of transportation, and who is not a carrier by rail, water, air or express, and other than the operations of a bona fide warehouseman.

(t) The term "restricted common carrier by motor vehicle" means any person not included in

the definition "common carrier by motor vehicle" who or which undertakes, whether directly or by lease or other arrangement, to transport passengers or property restricted to any class or classes of passengers or to any class, kind or commodity or property by motor vehicle for compensation, whether over regular or irregular routes, and/or "excursion passenger vehicles" as defined in chapter one hundred twenty-two, Public Laws one thousand nine hundred twenty-seven [§ 2621(1) et seq.], and amendments thereto. (1925, c. 50, s. 1; 1927, c. 136, s. 1; 1929, c. 193, s. 1; 1937, c. 247, ss. 1, 2.)

Editor's Note.—The 1937 amendment inserted the words "or over a regular route" in subsection (k), and added subsections (r), (s) and (t). The rest of the section, not being affected by the amendment, is not set out.

§ 2613(k). To whom applicable.—No corporation or person, their lessees, trustees, or receivers shall operate over the public highways in this state any motor vehicle or motor vehicle with trailer, as hereinbefore defined as a motor vehicle carrier, for the transportation of persons or property between cities, or between towns, or between cities and towns, or over a regular route, for compensation, except in accordance with the provisions of this act, and said operation shall be subject to control, supervision, and regulation by the commission in the manner provided by this act: Provided, that where the corporate limits of two or more cities join, they shall be treated as one for purposes of administering this act: provided, further, that nothing in this act shall prohibit a motor vehicle carrier under this act, nor any motor vehicle on which the franchise tax has been paid as provided in the current revenue act from making casual trips on call over routes established hereunder; provided, that on said casual trips no one shall be allowed to pick up any passenger or property along the route, nor be permitted on the return trip to carry any passengers or property other than those or that included in the original trip; nor shall it apply to motor vehicles used exclusively for transporting school students from and to their homes; nor to motor vehicles used exclusively for transporting persons to or from religious services; nor to motor vehicles used exclusively in carrying the United States mail; nor to motor vehicles used exclusively in transporting farm and dairy products from the farm or dairy to warehouse, creamery or other original storage or market; nor to motor vehicles used exclusively in the distribution of newspapers from the publisher to subscribers or distributors; nor to motor vehicles used exclusively in the transportation of bona fide employees of an industrial plant to and from the places of their regular employment: Provided, that if a franchise operator shall furnish such transportation facilities to such mill or factory maintaining a residential unit of one thousand inhabitants or more, the foregoing exception shall not be operative: Provided, further, that this shall not repeal chapter three hundred and seventy-five, Public Laws, one thousand nine hundred and thirty-one. (1925, c. 50, s. 2; 1927, c. 136, s. 2; 1929, cc. 193, s. 1, 254, s. 1; 1935, c. 111; 1937, c. 247, s. 2.)

Editor's Note.—The 1937 amendment inserted the words "or over a regular route" in the eighth line of this section.

§ 2613(l). Application for franchise certificate.—

(j) Franchise certificates may be granted to restricted common carriers as defined herein for any period in the discretion of the commissioner not to exceed three years.

(k) A brokerage license shall be issued to any qualified applicant therefor authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this article and the requirements, rules and regulations of the commissioner thereunder, and that the proposed service, to the extent to be authorized by the license, is or will be consistent with the public interest and policy declared herein; otherwise, such application shall be denied.

(l) No person shall engage in the business of a forwarder, subject to the provisions of this article, in intrastate operations within this state unless such person makes application to the commissioner and obtains a certificate issued by the commissioner authorizing such person to engage in such business as provided herein for other common carriers by motor vehicle: Provided, that where any such forwarder hires instead of owning motor vehicle equipment, such forwarder shall become subject to the provisions herein prescribed for brokers: Provided further, that it shall be unlawful for any such forwarder in the performance of its operation in intrastate commerce to employ or use any motor vehicle carrier which is not the lawful holder of an effective certificate issued as provided in this article. The commissioner may in any certificate issued restrict or prohibit the direct operation of any motor vehicles by such forwarder in intrastate commerce. Subject to the foregoing part of this subsection (l), a certificate shall be issued to any qualified applicant to conduct the business of forwarder in whole or in part, if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this article and the requirements, rules and regulations of the commissioner thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be consistent with the public interest and policy declared by this article; otherwise, such application shall be denied. (1925, c. 50, s. 3; c. 137; 1927, c. 136, s. 3; 1931, c. 182; 1933, c. 440, s. 1; 1937, c. 247, s. 3.)

Editor's Note.—The 1937 amendment added subsections (j), (k) and (l). The rest of the section, not being affected by the amendment, is not set out.

§ 2613(o). Insurance.—

Provided, that the commissioner may permit the filing by any licensed assurer a uniform master insurance policy contract, the terms of which shall conform to the foregoing, and when approved and accepted by the commissioner, shall be applicable to all insurance policy contracts filed by such assurer for motor vehicle carriers under this act, and thereafter, so long as the master policy contract shall remain in force, carriers under this act may be permitted to file certificates, in such form as the commissioner may prescribe, evidencing fleet coverage under the terms of such master policy instead of filing a separate individual policy contract in each case: Provided, that brokers and forwarders not oper-

ating motor vehicles under a certificate shall be required to file bond to cover financial responsibility not in excess of amounts required by the interstate commerce commission. (1927, c. 136, s. 6; 1937, c. 403.)

Editor's Note.—The 1937 amendment directed that the above provision be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

§ 2613(q). General powers of commissioner.—The commissioner shall at any time, upon complaint, or upon his own motion, that any operator transporting persons or property by a motor vehicle, licensed under the provisions of this or any other act by the state of North Carolina, be engaged in violating the provisions of this article or any rules or regulations prescribed by the commissioner, or violating any of the laws of the state with respect to the rights, duties, and privileges of motor vehicle carriers for the transportation of either persons or property on franchise certificate issued under the provisions of this article, cause an order to be issued directing the owner of the motor vehicle alleged to be engaged in any of the acts specified to appear before the commissioner at a fixed time and place, at which time the commissioner shall investigate the complaint made; and if the commissioner shall be satisfied after such hearing that the said motor vehicle carrier has been engaged in practice or practices violating the terms of his franchise or the rules and regulations for the enforcement thereof, or, if not a franchise carrier, has been invading the prerogatives, privileges, or rights of a duly licensed franchise carrier by operating on the route of a common carrier by soliciting or transporting passengers or property at lower than approved rates for the common carrier, or without a bona fide contract, the commissioner shall issue an order requiring the suspension of such practice or practices conditioned upon the revocation of the motor vehicle license of the offending party if he shall fail within the time specified by the commissioner to desist from such offending practice or practices; and upon the failure of any offending motor vehicle carrier to obey such order of the commissioner, the commissioner shall certify this fact to the commissioner of revenue, whereupon the commissioner of revenue shall cause the license or licenses of the offending motor vehicle carrier to be canceled, and such offending carrier who shall thereafter engage in the hauling of any persons or property for compensation shall be guilty of a misdemeanor, and each day's operation shall constitute a separate offense: Provided, the holder of any certificate, franchise or license whose certificate, franchise or license is ordered canceled hereunder shall have the right of appeal to the superior court as is now provided by law for appeals from the commissioner, but no such holder shall operate pending such appeal unless permitted to do so by order of the commissioner. (1927, c. 136, s. 8; 1937, c. 247, s. 4.)

Editor's Note.—The 1937 amendment struck out the former section and inserted the above in lieu thereof. The present section refers to "commissioner" instead of "commission."

Obviously this section is leveled at those carriers operating or purporting to operate under contract with particular shippers rather than operating under a franchise and serving the public generally. Such contract carriers must now have bona fide contracts. This probably means that they may

not take occasional business, but must have contracts with shippers running over a period of time and calling for continued service. The provisions designed to prevent contract carriers from obtaining business by cutting rates below those of common carriers are a step in the direction already taken by other states which have set up systems of control of private contract motor carriers. 15 N. C. Law Rev., No. 4, pp. 360, 361.

§ 2613(v). Fares, charges, and free transportation.—No motor vehicle carrier shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such carrier as specified in its tariffs filed with and approved by the commission and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, or extend to any person, firm, co-partnership, or corporation, or other organization, or association, privileges or facilities in the transportation of persons or property except such as are regularly and uniformly extended to all; and no such carrier shall, directly or indirectly, issue, give, tender, or honor any free fares except to its bona fide officers, agents, employees, and members of their immediate families, and such persons as the commission may designate in its employ, the employ of the state highway and public works commission and/or the motor vehicle bureau, for the inspection of equipment and supervision of traffic upon the highways of the state: Provided, that motor vehicle carriers under the act may exchange free transportation within the limits of this section. Provided, that any motor vehicle carrier may carry free any blind preacher within the state of North Carolina upon its busses or motor vehicles operating in the state of North Carolina, under the condition that said preacher shall carry or present to such motor vehicle carrier a certificate showing what church or sect he may represent and that he is in good and regular standing with that denomination or sect. (1927, c. 136, s. 13; 1929, c. 58, s. 1; 1937, c. 247, s. 5.)

Editor's Note.—The 1937 amendment added the clause relating to employees of the state highway and public works commission and the motor vehicle bureau.

§ 2613(aa). Maintenance of actions; fees; funds for enforcement; conferences, etc.—The commission shall have the right and authority to enforce by injunction or other ancillary remedy the provisions of this article or the rules and regulations made under this article.

(a) **Fees.**—Each applicant for a certificate shall deposit with the commissioner as a filing fee the sum of ten dollars (\$10.00) at the time of application, and fee of one dollar (\$1.00) for each motor vehicle added thereafter; and for annual re-registration for the purchase of license, number plates, or tags, a fee of twenty-five cents (25c) for each motor vehicle so re-registered; and for renewal of certificate, a fee of twenty-five cents (25c) for each motor vehicle being operated under the certificate at the time application for renewal is filed: Provided, that brokers and forwarders not applying for nor holding certificates for the operation of motor vehicles shall deposit a filing fee of twenty-five dollars (\$25.00) each at the time of application and twenty-five dollars (\$25.00) per annum thereafter in addition to any other tax or

fee provided by law. Such fees, when received by the commissioner, shall be paid forthwith to the state treasurer and credited to the highway fund for enforcement purposes. This section shall be in force from and after the ratification of this law.

(b) Funds for Enforcement.—The highway and public works commission is hereby empowered, with the approval of the director of the budget, from time to time to appropriate sufficient funds for the use of the commissioner for the reasonable enforcement of this article, to be by him disbursed under the supervision of the director of the budget.

(c) Conferences and Joint Hearings.—The commissioner or his authorized representative is authorized to confer with and hold joint hearings with the authorities of any other state or representatives of the interstate commerce commission in connection with any matter arising under the Federal Motor Carrier Act, one thousand nine hundred thirty-five, or in establishing jurisdiction under this article or the Federal Act. (1927, c. 136, s. 18; 1937, c. 247, s. 6.)

Editor's Note.—The 1937 amendment added subsections (a), (b) and (c) to this section.

§ 2613(bb). Inconsistent acts.

Applied in *Kelly v. Hunsucker*, 211 N. C. 153, 189 S. E. 664.

Art. 4. Operation of Vehicles

§ 2616. Driving regulations; frightened animals; crossings.

See §§ 2641(46), 2641(49a) and the notes thereto.

§ 2618. Speed regulations; mufflers.

Evidence Sufficient to Establish Negligence Per Se.—Evidence that defendant drove his car into an intersection of highways at a speed in excess of 15 miles per hour when his vision of the intersecting highway was obstructed by growing corn, and that his speed was a proximate cause of the accident in suit, is sufficient to overrule his motion as of nonsuit, speed in excess of 15 miles per hour, under the circumstances, being in violation of this section and constituting negligence per se. *Turner v. Lipe*, 210 N. C. 627, 188 S. E. 108.

But Insufficient to Support Wanton Negligence.—*Turner v. Lipe*, 210 N. C. 627, 188 S. E. 108.

§ 2618(b). Duty of driver passing school bus.

This section applies to passing a school bus from either direction, from the rear or from the front. *State v. Webb*, 210 N. C. 350, 186 S. E. 241.

§ 2618(d). Standard qualifications for school bus drivers; speed limit.—No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the schools of the county in which said bus shall be operated a certificate from the highway patrol of North Carolina showing that he has been examined by a member of the said highway patrol, and that he is a fit and competent person to operate or drive a school bus over the public roads of the state.

It shall be unlawful for any person to operate or drive a school bus loaded with children over the public roads of North Carolina at a greater rate of speed than thirty-five miles per hour.

Any person violating paragraph two of this section shall, upon conviction, be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. (1937, c. 397, ss. 1-3.)

Art. 7. The Motor Vehicle Act; Department of Motor Vehicles; Registration

§ 2621(1). Definitions.

For act amending and consolidating this article and article eight, see § 2621(186) et seq.

Applied in *State v. Brooks*, 210 N. C. 273, 186 S. E. 237.

Art. 8. Uniform Act Regulating Operation of Vehicles on Highways

§ 2621(43). Definitions.

For act amending and consolidating this article and article seven, see § 2621(186) et seq.

§ 2621(44). Persons under the influence of intoxicating liquor or narcotic drugs.

Cited in *State v. Creech*, 210 N. C. 700, 188 S. E. 316, dissenting opinion.

§ 2621(45). Reckless driving.

When Person Guilty of Reckless Driving.—Under this section, a person is guilty of reckless driving (1) if he drives an automobile on a public highway in this state, carelessly and heedlessly, in a willful or wanton disregard of the rights or safety of others, or (2) if he drives an automobile on a public highway in this state without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. *State v. Folger*, 211 N. C. 695, 697, 191 S. E. 747.

An indictment under this section may be consolidated for trial with an indictment under § 2618(b), which prohibits the passing of a standing school bus on the highway. *State v. Webb*, 210 N. C. 350, 186 S. E. 241. See § 4622.

Sufficient Evidence to Sustain Negligence and Proximate Cause as a Matter of Law.—*Smith v. Miller*, 209 N. C. 170, 183 S. E. 370.

Instruction on Reckless Driving Held Reversible Error.—See *State v. Folger*, 211 N. C. 695, 697, 191 S. E. 747.

Cited in *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631.

§ 2621(46). Speed restrictions.

Under §§ 2616, 2618.—In accord with original. See *Hinshaw v. Pepper*, 210 N. C. 573, 187 S. E. 786.

Section Did Not Repeal § 2616 Providing Speed Limit in Traversing Bridge.—Section 2616 providing a speed limit of 10 miles per hour in traversing a bridge, is not repealed by this section, since this section does not purport to cover the whole field of speed regulation upon the state highways, and the provisions of the former section are not repugnant to those of the latter. *Kelly v. Hunsucker*, 211 N. C. 153, 189 S. E. 664, construing this section prior to 1935 amendment.

Sufficient Evidence to Overrule Defendant's Motion to Nonsuit in Prosecution for Manslaughter.—Evidence that the defendant was driving his car at a speed of from 50 to 55 miles per hour, on or near the center of the highway, when he collided with another car, resulting in the death of the driver thereof, was held sufficient to overrule defendant's motion to nonsuit in a prosecution for manslaughter, although defendant introduced evidence in sharp conflict. *State v. Webb*, 210 N. C. 137, 185 S. E. 659.

Driving Automobile in Excess of Forty-Five Miles Per Hour Is Only Prima Facie Negligence.—The driving of an automobile upon a highway at a speed in excess of forty-five miles per hour is not negligence per se or as a matter of law, but only prima facie evidence that the speed is unlawful under the provisions of this section. *State v. Weber*, 210 N. C. 137, 185 S. E. 659, citing *State v. Spencer*, 209 N. C. 827, 184 S. E. 835.

Prior to the enactment of this section the operation of a motor driven vehicle upon the highways of the State at a greater rate of speed than forty-five miles per hour was unlawful, and therefore negligence per se, since said enactment such operation is only prima facie evidence of negligence. *Exum v. Baumrind*, 210 N. C. 650, 651, 188 S. E. 200.

Applied in *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631.

Cited in *Pittman v. Downing*, 209 N. C. 219, 183 S. E. 362; *Taft v. Maryland Cas. Co.*, 211 N. C. 507, 191 S. E. 10.

§ 2621(46a). Restrictions on speed of trucks.

Where the evidence in a prosecution for manslaughter is not conclusive as to whether the truck operated by the defendant had attached thereto a trailer or semitrailer as defined by § 2621(1), and all the evidence shows that the defendant was driving the truck between thirty and thirty-

five miles per hour, it was held error for the court to instruct the jury that defendant's speed was limited to thirty miles per hour. *State v. Brooks*, 210 N. C. 273, 186 S. E. 237.

The burden is upon the State to prove that a truck had a trailer attached thereto as defined by § 2621(1) in order to reduce the maximum lawful speed at which a vehicle might be lawfully operated from thirty-five miles per hour as prescribed for trucks without trailers, to thirty miles per hour. *Id.*

Cited in *Taft v. Maryland Cas. Co.*, 211 N. C. 507, 191 S. E. 10.

§ 2621(49a). Signs showing safe speed and carrying capacity of bridges.

The provisions of § 2616 are not repealed by this section, since this section is not inconsistent with the ten-mile limit for traversing bridges set up by the former section. *Kelly v. Hunsucker*, 211 N. C. 153, 189 S. E. 664.

§ 2621(51). Drive on right side of highway.

Proximate Cause.—

In accord with original. See *Stovall v. Ragland*, 211 N. C. 536, 190 S. E. 899.

Burden on Plaintiff to Establish Negligence.—Where plaintiff's evidence leaves in speculation and conjecture the determinative fact of whether defendant's car was being driven on the wrong side of the highway at the time of the collision, defendant's motion to nonsuit is properly granted, the burden being on plaintiff to establish the negligence of defendant. *Cheek v. Barnwell Warehouse, etc., Co.*, 209 N. C. 569, 183 S. E. 729.

Applied in *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631.

§ 2621(53). Meeting of vehicles.

Assumption That Vehicle Will Turn to Right.—

In accord with original. See *Hancock v. Wilson*, 211 N. C. 129, 189 S. E. 631.

§ 2621(54). Overtaking a vehicle.

The violation of this section is negligence and if such negligence was the proximate cause of plaintiff's injuries, the defendant, nothing else appearing, is liable to the plaintiff in this action. *Stovall v. Ragland*, 211 N. C. 536, 539, 190 S. E. 899.

Evidence Sufficient to Raise Issue of Last Clear Chance.—Where the evidence tended to show that plaintiff, in order to avoid striking a chicken standing on the hard surface of the highway, drove his automobile gradually to the left, so that the car was traveling in about the center of the highway at the time of the accident in suit, and that a bus belonging to defendant was traveling in the same direction and hit plaintiff's car when the bus attempted to pass, it was held that conceding plaintiff was negligent in driving to the left without giving any signal or ascertaining if the car could be driven to the left in safety (§ 2621(59)), defendant's motion to nonsuit was erroneously granted, since the pleadings and evidence are sufficient to raise the issue of the last clear chance upon the evidence tending to establish defendant's negligence in failing to keep a safe distance between the vehicles (§ 2621(57)), and in failing to take the precautions and give the signals required by this section for passing cars on the highway. *Morris v. Seashore Transp. Co.*, 208 N. C. 807, 182 S. E. 487.

§ 2621(55). Limitations on privilege of overtaking and passing.

Reference.—See note to § 2621(54) of this Supplement.

Sufficient Evidence to Submit Question of Negligence to Jury.—Evidence that the driver of a truck, in attempting to pass cars going in the same direction, pulled out in the center of the road and hit the car which plaintiff was driving in the opposite direction, causing damage to the car and injury to plaintiff, was held sufficient to be submitted to the jury on the question of the actionable negligence of the driver of the truck. *Joyner v. Dail*, 210 N. C. 663, 188 S. E. 209.

§ 2621(57). Following too closely.

Reference.—See note to § 2621(54) of this Supplement.

§ 2621(59). Signals on starting, stopping or turning.

Reference.—See note to § 2621(54) of this Supplement.
Person Observing No Vehicles in Either Direction Is under No Obligation to Give Signal.—The plaintiff having first looked in both directions, and having observed no automo-

bile or other vehicle approaching from either direction, was under no obligation, by virtue of this section to give any signal of his purpose to turn to his left and enter the driveway to his home. He was therefore not negligent as a matter of law in failing to give a signal before he turned to his left and crossed the highway for the purpose of entering the driveway to his home. *Stovall v. Ragland*, 211 N. C. 536, 539, 190 S. E. 899.

§ 2621(66). Stopping on highway.

To "park" means something more than a mere temporary or momentary stoppage on the road for a necessary purpose. *Stallings v. Buchan Transport Co.*, 210 N. C. 201, 203, 185 S. E. 643.

Thus where the driver of a truck with a trailer stopped on the highway at night on the right-hand side, with lights burning, because two automobiles in front of him were interlocked in a wreck, and at the time of the collision the truck and trailer had been standing still only a fraction of a minute, and it remained parked for about five minutes thereafter, it was held that at the time of the collision the truck was not parked on the highway within the meaning of this section, and the length of time it remained still after the collision is immaterial to plaintiff's right to recover; since it was not the intention of those who drafted the statute to make it a violation of law for a driver of a heavy truck and trailer to stop on his right-hand side of the highway before driving around or by two cars interlocked in a collision on the highway, and around which a number of people were working. *Id.*

Section Not Violated Where Disabled Truck Is Parked on Shoulder of Highway.—See *State v. McDonald*, 211 N. C. 672, 676, 191 S. E. 733.

Evidence Disclosing Contributory Negligence of Plaintiff.—Conceding defendant was negligent in parking the car on the hard surface in violation of this section, the evidence discloses contributory negligence of plaintiff as a matter of law in attempting to pass the parked car without first ascertaining that he could pass the car in safety. *McNair v. Kilmer & Co.*, 210 N. C. 65, 185 S. E. 481.

§ 2621(71). Duty to stop in event of accident.—

(b) The driver of any vehicle involved in an accident resulting in damage to property shall immediately stop such vehicle at the scene of such accident and any person violating this provision shall upon conviction be punished by a fine or imprisonment, in the discretion of the court.

(1937, c. 34.)

Editor's Note.—Prior to the 1937 amendment the punishment provided for in subsection (b) was "as provided in § 2621(100)." The rest of the section, not being affected by the amendment, is not set out.

Art. 15. Motor Vehicle Law of 1937

Part 1. General Provisions

§ 2621(186). Certain laws amended to conform with provisions of article.—Chapter one hundred and twenty-two of the Public Laws of one thousand nine hundred and twenty-seven [§ 2621(1) et seq.] and chapter one hundred and forty-eight of the Public Laws of one thousand nine hundred and twenty-seven [§ 2621(43) et seq.], and all acts amendatory thereof, and all acts passed prior thereto dealing with the matter of registration and licensing of motor vehicles, be, and the same are hereby, amended and consolidated in conformity with the provisions hereinafter set out in this article. (1937, c. 407, s. 1.)

§ 2621(187). Definition of words and phrases.—The following words and phrases when used in this article shall, for the purpose of this article, have the meanings respectively prescribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) **Business District.**—The territory contiguous to a highway when fifty per cent or more of the frontage thereon for a distance of three hundred

feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business.

(b) Commissioner.—Commissioner, when herein referred to, shall refer to the commissioner of revenue.

(c) Department.—Department herein used shall mean the motor vehicle bureau of the department of revenue, acting directly or through its duly authorized officers and agents.

(d) Dealer.—Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semi-trailers in this state, having an established place of business in this state and being subject to the tax levied by section 7880(84).

(e) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(f) Established Place of Business. — The place actually occupied either continuously or at regular periods by a dealer or manufacturer, where his books and records are kept and a large share of his business is transacted.

(g) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combusive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous presses are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(h) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(i) Foreign Vehicle.—Every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this state.

(j) House Trailer.—Any trailer or semi-trailer so designed and equipped as to provide living and/or sleeping facilities and drawn by a motor vehicle.

(k) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(l) Intersection.—The area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

(m) Local Authorities.—Every county, municipality, or other territorial district with local board or body having authority to adopt local police regulations under the constitution and laws of this state.

(n) Manufacturer. — Every person engaged in the business of manufacturing motor vehicles, trailers or semi-trailers.

(o) Metal Tire.—Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material.

(p) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.

(q) Passenger Vehicles. — (1) Excursion passenger vehicles.

Passenger vehicles kept in use for the purpose of transporting persons on sight-seeing or travel tours.

(2) For hire passenger vehicles.

Passenger motor vehicles engaged in the business of transporting passengers for compensation; but this classification shall not include motor vehicles of seven-passenger capacity or less operated by the owner where the cost of operation is shared by neighbor fellow workmen between their homes and the place of regular daily employment, when operated for not more than two trips each way per day.

(3) Franchise bus carriers.

Passenger motor vehicles operated under a franchise certificate issued by the utilities commission under chapter fifty of the Public Laws of one thousand nine hundred and twenty-five [§ 2613(j) et seq.] and amendments thereto, for operation on the public highways of this state between fixed termini or over a regular route for the transportation of persons or property for compensation.

(4) Motorcycle.

Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(5) U-Drive-It passenger vehicles.

Passenger motor vehicles used for the purpose of rent or lease to be operated by the lessee.

(6) Private passenger vehicles.

All other passenger vehicles not included in the above definitions.

(r) Property-Hauling Vehicles.—(1) Contract hauler vehicles.

Motor vehicles used for the transportation of property for hire, but not licensed as franchise hauler vehicles under the provisions of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-seven [§ 2613(j) et seq.] and amendments thereto: Provided, it shall not be construed to include the transportation of farm crops or products, including wood products cut and delivered from within a radius of twenty-five miles of market, but otherwise not including forest products from farms to the first or primary markets.

(2) Franchise hauler vehicles.

Every motor vehicle used for the transportation of property between fixed termini, or over a regular route, with the right to make occasional trips off said route as provided in chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-seven [§ 2613(j) et seq.] and amendments thereto: Provided, only such vehicles shall be so classified as the utilities commission shall determine to be reasonably necessary for the proper handling of the business on said route,

and the determination so arrived at duly certified by the utilities commissioner to the motor vehicle bureau.

(3) Private hauler vehicles.

All motor vehicles used for the transportation of property not falling within one of the above defined classifications.

(4) Semi-Trailer.

Every vehicle without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of its weight and/or its load rests upon or is carried by the pulling vehicle.

(5) Trailers.

Every vehicle without motive power designed for carrying property or persons wholly on its own structure and to be drawn by a motor vehicle. This shall include so-called pole trailers or a pair of wheels used primarily to balance a load, rather than for purposes of transportation.

(s) Non-Resident.—Every person who is not a resident of this state.

(t) Owner.—A person who holds the legal title of a vehicle or, in the event a vehicle is subject to an agreement for conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the original vendee or lessee; or, in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this article.

(u) Person. — Every natural person, firm, co-partnership, association, corporation, or governmental agency.

(v) Pneumatic Tire.—Every tire in which compressed air is designed to support the load.

(w) Private Road or Driveway.—Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(x) Reconstructed Vehicle.—Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(y) Road Tractor. — Every motor vehicle designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(z) Safety Zone.—The area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(aa) Specially Constructed Vehicles. — Every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(bb) Special Mobile Equipment.—Every vehicle not designed or used primarily for the transportation of persons or property, but incidentally operated or moved over the highways, such as farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers. The foregoing enu-

meration shall be deemed partial and shall not operate to exclude other vehicles which are within the general terms of this section.

(cc) Street and Highway.—The entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic.

(dd) Solid Tire.—Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(ee) Truck Tractor. — Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(ff) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks. (1937, c. 407, s. 2.)

Part 2. Authority and Duties of Commissioner and Department

§ 2621(188). The commissioner of revenue shall perform the duties of vehicle commissioner.—The commissioner of revenue is hereby designated as the vehicle commissioner of this state; and he shall have all powers and perform such duties as are herein imposed upon the vehicle commissioner. (1937, c. 407, s. 3.)

§ 2621(189). Administering and enforcing laws; rules and regulations; agents, etc., seal.—(a) The commissioner is hereby vested with the power and is charged with the duty of administering and enforcing the provisions of this article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the department.

(b) The commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this article and any other laws the enforcement and administration of which are vested in the department.

(c) The commissioner is authorized to designate and appoint such agents, field deputies, and clerks as may be necessary to carry out the provisions of this article.

(d) The commissioner shall adopt an official seal for the use of the department. (1937, c. 407, s. 4.)

§ 2621(190). Offices of department. — The vehicle commissioner shall maintain an office in Raleigh, North Carolina, and in such places in the state as he shall deem necessary to properly carry out the provisions of this article. (1937, c. 407, s. 5.)

§ 2621(191). Commissioner to provide forms required.—The commissioner shall provide suitable forms for applications, certificates of title and registration cards, registration number plates and all other forms requisite for the purpose of this article, and shall prepay all transportation charges thereon. (1937, c. 407, s. 6.)

§ 2621(192). Authority to administer oaths and certify copies of records.—(a) Officers and employees of the department designated by the commissioner are, for the purpose of administering the

motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(b) The commissioner and such officers of the department as he may designate are hereby authorized to prepare under the seal of the department and deliver upon request a certified copy of any record of the department, charging a fee of fifty cents (50c) for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof. (1937, c. 407, s. 7.)

§ 2621(193). Records of department.—(a) All records of the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours.

(b) The commissioner may destroy any registration records of the department which have been maintained on file for three years which he may deem obsolete and of no further service in carrying out the powers and duties of the department. (1937, c. 407, s. 8.)

§ 2621(194). Authority to grant or refuse applications.—The department shall examine and determine the genuineness, regularity and legality of every application for registration of a vehicle and for a certificate of title therefor, and of any other application lawfully made in the department, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. (1937, c. 407, s. 9.)

§ 2621(195). Seizure of documents and plates.—The department is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used. (1937, c. 407, s. 10.)

§ 2621(196). Distribution of synopsis of laws.—The department may publish a synopsis or summary of the laws of this state regulating the operation of vehicles, and deliver to any person on request a copy thereof without charge. (1937, c. 407, s. 11.)

§ 2621(197). Department may summon witnesses and take testimony.—(a) The commissioner and officers of the department designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the department. Such summons may require the production of relevant books, papers, or records.

(b) Every such summons shall be served at least five days before the return date, either by personal service made by any person over eighteen years of age or by registered mail, but return acknowledgment is required to prove such latter service. Failure to obey such a summons so served shall constitute a misdemeanor. The fees for the at-

tendance and travel of witnesses shall be the same for witnesses before the superior court.

(c) The superior court shall have jurisdiction, upon application by the commissioner, to enforce all lawful orders of the commissioner under this section. (1937, c. 407, s. 12.)

§ 2621(198). Giving of notice.—Whenever the department is authorized or required to give any notice under this article or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the department. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the department or affidavit of any person over twenty-one years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof. (1937, c. 407, s. 13.)

§ 2621(199). Police authority of department.—The commissioner and such officers and inspectors of the department as he shall designate and all members of the highway patrol shall have the power:

(a) Of peace officers for the purpose of enforcing the provisions of this article and of any other law regulating the operation of vehicles or the use of the highways.

(b) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of this article or other laws regulating the operation of vehicles or the use of the highways.

(c) At all times to direct all traffic in conformance with law, and in the event of a fire or other emergency or to expedite traffic or to insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law.

(d) When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this article or of any other law regulating the operation of vehicles to require the driver thereof to stop and exhibit his driver's license and the registration card issued for the vehicle, and submit to an inspection of such vehicle, the registration plates and registration card thereon or to an inspection and test of the equipment of such vehicle.

(e) To inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof.

(f) To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.

(g) To investigate traffic accidents and secure testimony of witnesses or of persons involved.

(h) To investigate reported thefts of motor vehicles, trailers and semi-trailers. (1937, c. 407, s. 14.)

Part 3. Registration and Certificates of Titles of Motor Vehicles

§ 2621(200). Owner to secure registration and certificate of title.—Every owner of a vehicle intended to be operated upon any highway of this state and required by this article to be registered shall, before the same is so operated, apply to the department for and obtain the registration thereof, the registration plates therefor, and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and non-residents contained in section 2621(229): Provided, that nothing herein contained shall require the application for or the issuance of a certificate of title for a trailer, or semi-trailer, though, before operating a trailer or semi-trailer upon the highways of the state, the owner thereof must obtain the registration thereof and pay the registration fees as now provided by part seven of this article. (1937, c. 407, s. 15.)

§ 2621(201). Exempt from registration.—(a) Any such vehicle driven or moved upon a highway in conformance with the provisions of this article relating to manufacturers, dealers, or non-residents.

(b) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(c) Any implement of husbandry, whether of a type otherwise subject to registration hereunder or not, which is only incidentally operated or moved upon a highway.

(d) Any special mobile equipment as herein defined.

(e) No certificate of title need be obtained for any vehicle of a type subject to registration owned by the government of the United States. (1937, c. 407, s. 16.)

§ 2621(202). Application for registration and certificates of title.—(a) Every owner of a vehicle subject to registration hereunder shall make application to the department for the registration thereof and issuance of a certificate of title for such vehicle upon the appropriate form or forms furnished by the department, and every such application shall bear the signature of the owner written with pen and ink, and said signature shall be acknowledged by the owner before a person authorized to administer oaths, and said application shall contain:

1. The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation;

2. A description of the vehicle, including, in so far as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the serial number of the vehicle, the engine and other identifying numbers of the vehicle and whether new or used, and if a new vehicle, the date of sale and actual date of delivery of vehicle by the manufacturer or dealer to the person intending to operate such vehicle;

3. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest;

4. Such further information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

(b) When such application refers to a new or foreign vehicle purchased from a dealer, the application shall be accompanied by an application for certificate of title in the name of the dealer containing the description of vehicle, statement of dealer's title and all liens or encumbrances upon said vehicle, the name and address of person to whom sold, date of sale, actual date vehicle was delivered to purchaser, and such other information as may be required by the department. (1937, c. 407, s. 17.)

§ 2621(203). Application for specially constructed, reconstructed, or foreign vehicle.—(a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this state, the owner shall surrender to the department all registration cards and certificates of title or other evidence of such foreign registration as may be in his possession or under his control, except as provided in sub-division (b) hereof.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the department in its discretion, and upon a proper showing, shall register said vehicle in this state but shall not issue a certificate of title for such vehicle. (1937, c. 407, s. 18.)

§ 2621(204). Authority for refusing registration or certificate of title.—The department shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(a) That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this article;

(b) That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

(c) That the department has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having valid lien upon such vehicle;

(d) That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

(e) That the required fee has not been paid. (1937, c. 407, s. 19.)

§ 2621(205). Examination of registration records and index of stolen and recovered vehicles.—The department, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the

engine and serial numbers shown in the application against the indexes of registered motor vehicles, and against the index of stolen and recovered motor vehicles required to be maintained by this article. (1937, c. 407, s. 20.)

§ 2621(206). Registration indexes. — The department shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title, shall register the vehicle therein described and keep a record thereof in suitable books or on index cards as follows:

(a) Under a distinctive registration number assigned to the vehicle;

(b) Alphabetically, under the name of the owner;

(c) Under the motor number, if available; otherwise any other identifying number of the vehicle; and

(d) In the discretion of the department, in any other manner it may deem advisable. (1937, c. 407, s. 20½.)

§ 2621(207). The department to issue certificate of title and registration card.—(a) The department upon registering a vehicle shall issue a registration card and a certificate of title as separate documents.

(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for owner's signature, the registration number assigned to the vehicle, and such description of the vehicle as determined by the commissioner, and upon the reverse side a form for endorsement of notice to the department upon transfer of the vehicle.

(c) Every owner, upon receipt of a registration card, shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers, or shall be carried by the person operating or in control of such vehicle, who shall display the same upon demand of any peace officer or any officer of the department.

(d) The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration card, and in addition thereto the date of issuance and a statement of the owner's title and of all liens and encumbrances upon the vehicle therein described, and whether possession is held by the owner under a lease, contract or conditional sale, or other like agreement.

(e) The certificate of title shall also contain upon the reverse side form of assignment of title or interest and warranty thereof, with space for notation of liens and encumbrances upon such vehicle at the time of a transfer.

(f) Certificates of title upon which liens or encumbrances are shown shall be delivered or mailed by the department to the holder of the first lien or encumbrance.

(g) Certificates of title shall bear thereon the seal of the department.

(h) Certificates of title need not be renewed annually, but shall remain valid until canceled by the department for cause or upon a transfer of any interest shown therein. (1937, c. 407, s. 21.)

§ 2621(208). Release by lien holder to owner.

—(a) A person holding a lien or encumbrance as shown upon a certificate of title upon a vehicle may release such lien or encumbrance or assign his interest to the owner without affecting the registration of said vehicle. The department, upon receiving a certificate of title upon which a lien holder has released or assigned his interest to the owner or upon receipt of a certificate of title not so endorsed, but accompanied by a legal release from a lien holder of his interest in or to a vehicle, shall issue a new certificate of title as upon an application for duplicate certificate of title.

(b) Any lien in favor of any person, firm or corporation which, since notice of such lien to the department has dissolved, ceased to do business, or gone out of business for any reason whatsoever, and which shall remain of record in the department as a notice of lien of such person, firm or corporation for a period of more than three years from the date of notice, shall become null and void and of no further force and effect as it relates to the issuance or transfer of title by the department. (1937, c. 407, s. 22.)

§ 2621(209). Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.—It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title as provided in this article to refuse or fail to surrender such certificate of title to the person legally entitled thereto, when called upon by such person, within ten days after his lien shall have been paid and satisfied, and any person convicted under this section shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. (1937, c. 407, s. 23.)

§ 2621(210). Owner after transfer not liable for negligent operation.—The owner of a motor vehicle who has made a bona fide sale or transfer of his title or interest, and who has delivered possession of such vehicle and the certificate of title thereto properly endorsed to the purchaser or transferee, shall not be liable for any damages thereafter resulting from negligent operation of such vehicle by another. (1937, c. 407, s. 24.)

§ 2621(211). Owner dismantling or wrecking vehicle to return evidence of registration. — Any owner dismantling or wrecking any vehicle shall forward to the department the certificate of title, registration card and/or other proof of ownership, and the registration plate or plates last issued for such vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. (1937, c. 407, s. 25.)

§ 2621(212). Sale of motor vehicles to be dismantled.—Any owner who sells a motor vehicle as scrap or to be dismantled or destroyed shall assign the certificate of title thereto to the purchaser, and shall deliver such certificate so assigned to the department with an application for a permit to dismantle such vehicle. The department shall thereupon issue to the purchaser a permit to dismantle the same, which shall authorize such person to possess or transport such vehicle or to transfer ownership thereto by endorsement upon such permit. A certificate of title shall not again be issued for such motor vehicle in the event it is scrapped, dismantled, or destroyed. In any case,

where the owner for any reason fails to send in title for a junked or dismantled vehicle, the department shall have authority to take possession of such title for cancellation. (1937, c. 407, s. 26.)

§ 2621(213). Registration plates to be furnished by the department.—(a) The department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semi-trailer and two registration plates for every other motor vehicle. Registration plates issued by the department under this article shall be and remain the property of the state, and it shall be lawful for the commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same.

(b) Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, also the name of the state of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

(c) Such registration plate and the required numerals thereon, except the year number for which issued, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer or semi-trailer shall be attached thereto, one in the front and the other in the rear. The registration plate issued for a motorcycle, trailer or semi-trailer shall be attached to the rear thereof.

(e) Preservation and cleaning of registration plates: It shall be the duty of each and every registered owner of a motor vehicle to keep the registration plates assigned to such motor vehicle reasonably clean and free from dust and dirt, and such registered owner, or any person in his employ, or who operates such motor vehicle by his authority, shall, upon the request of any proper officer, immediately clean such registration plates so that the numbers thereon may be readily distinguished, and any person who shall neglect or refuse to so clean a registration plate, after having been requested to do so, shall be guilty of a misdemeanor, and fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty days.

(f) Operating with false numbers. Any person who shall wilfully, and with intent to defraud the state of registration fees, operate a motor vehicle with a registration plate which has been repainted or altered or forged, or which was issued by the commissioner for a motor vehicle other than the one on which used, shall be guilty of a misdemeanor.

(g) Alteration, disguise, or concealment of numbers. Any operator of a motor vehicle who shall wilfully and with intent to conceal the identity of such motor vehicle or the identity of the registered owner thereof, mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall

place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a misdemeanor. (1937, c. 407, s. 27.)

§ 2621(214). Transfer of registration plates.—(a) Registration plates issued by the department for vehicles privately owned and operated shall not be transferred from one vehicle to another, but shall be assigned and transferred from one owner to another, upon the assignment of title as required by this article, and shall remain on the vehicle for which originally issued.

(b) Registration plates issued by the department for vehicles owned and operated by the state or any department thereof, or by any county, city or town, school district or other political subdivision of the state, shall not be assigned and transferred from one owner to another, but shall be retained by the owner to whom originally issued, and may be used by the owner on another vehicle: Provided, that the owner shall make application to the department for said transfer and comply with the requirements of this article relative to certificate of title for vehicle the registration plates are to be transferred to.

(c) Registration plates issued by the department for vehicles operated for hire shall be subject to the same transfer provision as of vehicles owned by the state or any department thereof as set forth in subsection (b) of this section. (1937, c. 407, s. 28.)

§ 2621(215). Expiration of registration.—Every vehicle registration under this article and every registration card and registration plate issued hereunder shall expire at midnight on the thirty-first day of December of each year. (1937, c. 407, s. 29.)

§ 2621(216). Application for renewal of registration.—(a) Application for renewal of a vehicle registration shall be made by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law.

(b) The department may receive applications for renewal of registration and grant the same, and issue new registration cards and plates at any time prior to expiration of registration, but no person shall display upon a vehicle the new registration plates prior to December first. (1937, c. 407, s. 30.)

§ 2621(217). Notice of change of address or name.—(a) Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, shall move from the address named in the application or shown upon a registration card or certificate of title, such person shall within ten days thereafter notify the department in writing of his old and new addresses.

(b) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise, such person shall within ten days notify the department of such former and new name. (1937, c. 407, s. 31.)

§ 2621(218). Replacement of lost or damaged

certificates, cards and plates.—(a) In the event any registration card or registration plate is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the department, shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the department, upon the applicant furnishing under oath information satisfactory to the department and payment of required fee.

(b) When a dealer acquires a motor vehicle which has been previously licensed, he should advise the party from whom he acquires the vehicle as to the provisions of the law which require that party to report to the motor vehicle bureau the sale or disposal of the vehicle. If the dealer wishes to have the license transferred to his name he may do so, but this is optional with him. However, should the license plate or plates be lost or destroyed while the vehicle is in the possession of the dealer, no replacement may be issued unless and until license and title has been transferred to the dealer. Nor shall any subsequent owner secure replacement plates until application for transfer of title and license has been made.

(c) In the event any certificate of title is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the department, shall immediately make application for and may obtain a duplicate upon the applicant furnishing under oath information satisfactory to the department and payment of required fee. Upon issuance of any duplicate certificate of title the previous certificate last issued shall be void. (1937, c. 407, s. 32.)

§ 2621(219). Department authorized to assign new engine number.—The owner of a motor vehicle upon which the engine number or serial number has become illegible or has been removed or obliterated shall immediately make application to the department for a new engine or serial number for such motor vehicle. The department, when satisfied that the applicant is the lawful owner of the vehicle referred to in such application is hereby authorized to assign a new engine or serial number thereto, and shall require that such number, together with the name of this state, or a symbol indicating this state, be stamped upon the engine, or in the event such number is a serial number, then upon such portion of the motor vehicle as shall be designated by the department. (1937, c. 407, s. 33.)

§ 2621(220). Department to be notified when another engine is installed.—(a) Whenever a motor vehicle registered hereunder is altered by the installation of another engine in place of an engine, the number of which is shown in the registration records, the owner of such motor vehicle shall immediately give notice to the department in writing on a form prepared by it, which shall state the number of the former engine and the number of the newly installed engine, the registration number of the motor vehicle, the name of the owner and any other information which the department may require. Whenever another engine has been substituted as provided in this section, and the notice given as required hereunder,

the department shall insert the number of the newly installed engine upon the registration card and certificate of title issued for such motor vehicle.

(b) Whenever a new engine or serial number has been assigned to and stamped upon a motor vehicle as provided in section 2621(219), or whenever a new engine has been installed as provided in this section, the department shall require the owner to surrender to the department the registration card and certificate of title previously issued for said vehicle. The department shall also require the owner to make application for a duplicate registration card and a duplicate certificate of title showing the new motor or serial number thereon, and upon receipt of such application and fee, as for any other duplicate title, the department shall issue to said owner a duplicate registration and a duplicate certificate of title showing thereon the new number in place of the original number. (1937, c. 407, s. 34.)

§ 2621(221). Altering or forging certificate of title a felony.—Any person who shall alter with fraudulent intent any certificate of title or registration card issued by the department, or forge or counterfeit any certificate of title or registration card purporting to have been issued by the department under the provisions of this article, or who shall alter or falsify with fraudulent intent or forge any assignment thereof, or who shall hold or use any such certificate, registration card or assignment knowing the same to have been altered, forged or falsified, shall be guilty of a felony and upon conviction thereof shall be punished in the discretion of the court. (1937, c. 407, s. 35.)

Part 4. Transfer of Title or Interest

§ 2621(222). Transfer by owner.—(a) Whenever the owner of a registered vehicle transfers or assigns his title or interest thereto, he shall endorse upon the reverse side of the registration card issued for such vehicle the name and address of the transferee and the date of transfer, and shall immediately forward such card to the department.

(b) The owner of any vehicle registered under the foregoing provisions of this article, transferring or assigning his title or interest thereto, shall also endorse an assignment and warranty of title in form approved by the department upon the reverse side of the certificate of title or execute an assignment and warranty of title of such vehicle and a statement of all liens or encumbrances thereon, which statement shall be verified under oath by the owner, who shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle, except that where a deed of trust, mortgage, conditional sale or title retaining contract is obtained from purchaser or transferee in payment of purchase price or otherwise, the lien holder shall forward such certificate of title papers to the department within fifteen days, together with necessary fees, or deliver such papers to the purchaser at the time of delivering the vehicle, as he may elect, but in either event the penalty provided in section 2621(224) shall apply if application for transfer is not made within fifteen days. (1937, c. 407, s. 36.)

§ 2621(223). **New owner to secure transfer of registration and new certificate of title.**—The transferee within fifteen days after the purchase shall apply to the department for a transfer of registration of the vehicle and shall present the certificate of title endorsed and assigned as hereinbefore provided to the department, and make application for and obtain a new certificate of title for such vehicle except as otherwise permitted in sections 2621(225) and 2621(226). (1937, c. 407, s. 37.)

§ 2621(224). **Penalty for failure to make application for transfer within the time specified by law.**—It is the intent and purpose of this article that every new owner or purchaser of a vehicle previously registered shall make application for transfer of title and registration within fifteen days after acquiring same, or see that such application is sent in by the lien holder with proper fees, and responsibility for such transfer shall rest on the purchaser. Any person, firm or corporation failing to do so shall pay a penalty of two dollars (\$2.00) in addition to the fees otherwise provided in this article. It is further provided that any dealer or owner who shall knowingly make any false statement in any application required by this department as to the date a vehicle was sold or acquired shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. All moneys collected under this section shall go to the state highway fund. (1937, c. 407, s. 38.)

§ 2621(225). **When transferee is a dealer.**—When the transferee of a vehicle is a dealer who holds the same for resale and operates the same only for purposes of demonstration under a dealer's number plate such transferee shall not be required to register such vehicle nor forward the certificate of title to the department as provided in section 2621(223), but such transferee, upon transferring his title or interest to another person, shall give notice of such transfer to the department and shall execute and acknowledge an assignment and warranty of title in form approved by the department, and deliver the same to the person to whom such transfer is made at the same time the vehicle is delivered, except as provided in section 2621(222), sub-section (b). (1937, c. 407, s. 39.)

§ 2621(226). **Title lost or unlawfully detained.**—Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the department is hereby authorized to receive such application and to examine into the circumstances of the case, and may require the filing of affidavits or other information; and when the department is satisfied that the applicant is entitled thereto is hereby authorized to register such vehicle and issue a new registration card, registration plate or plates and certificates of title to the person entitled thereto, upon payment of proper fee for duplicate title and/or replacement. (1937, c. 407, s. 40.)

§ 2621(227). **Transfer by operation of law.**—

(a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a transfer of registration to himself and a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases: Provided, however, transfers of registration shall only be made as provided for in section 2621(214), sub-sections (a), (b) and (c).

(b) In the event of transfer as upon inheritance, devise or bequest, the department shall, upon receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. However, if no administrator has qualified or the clerk of the superior court refuses to issue a certificate, the department may upon affidavit showing satisfactory reasons therefor effect such transfer, but the new title so issued shall not affect the validity nor be in prejudice of any creditor's lien.

(c) **Mechanic's or Storage Lien.**—In any case where a vehicle is sold under a mechanic's or storage lien, the department shall be given a thirty-day notice as provided in section 2621(264). (1937, c. 407, s. 41.)

§ 2621(228). **When department to transfer registration and issue new certificate.**—(a) The department, upon receipt of a properly endorsed certificate of title and application for transfer of registration, accompanied by the required fee, shall transfer the registration thereof under its registration number to the new owner, and shall issue a new registration card and certificate of title as upon an original registration.

(b) The department shall retain and appropriately file every application for certificate of title upon which certificate of title was issued and every surrendered certificate of title, such file to be so maintained as to permit the tracing of title of the vehicle designated therein. (1937, c. 407, s. 42.)

Part 5. Issuance of Special Plates

§ 2621(229). **Registration by manufacturers and dealers.**—(a) A manufacturer of or dealer in motor vehicles, trailers or semi-trailers, owning or operating any such vehicle or any vehicle known as a wrecker and owned by a dealer upon any highway in lieu of registering such vehicle, may obtain from the department, upon application therefor upon the proper official forms and payment of the fees required by law, and attach to each such vehicle two number plates, which plates shall each bear thereon a distinctive number, also the name of this state, which may be abbreviated, and the year for which issued, together with the word "dealer" or a distinguishing symbol indicating that such plate or plates are issued to a dealer,

may, during the calendar year for which issued, be transferred from one such vehicle to another owned and operated by such manufacturer or dealer.

(b) Every manufacturer of or dealer in motor vehicles shall obtain and have in their possession a certificate of title issued by the department to such manufacturer or dealer of each vehicle, owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required for any new vehicle to be sold as such by a manufacturer or dealer prior to the sale of such vehicle by the manufacturer or dealer; except that any dealer or any employee of any dealer may operate any motor vehicle, trailer or semi-trailer, the property of the dealer, for the purpose of furthering the business interest of the dealer in the sale, demonstration and servicing of motor vehicles, trailers and semi-trailers, of collecting accounts, contacting prospective customers and generally carrying on routine business necessary for conducting a general motor vehicle sales business: Provided, that no use shall be made of dealers' demonstration plates on vehicles operated in any other business dealers may be engaged in: Provided further, that dealers may allow the operation of motor vehicles owned by dealers and displaying dealer's demonstration plates in the personal use of persons other than those employed in the dealer's business: Provided further, that said persons shall, at all times while operating a motor vehicle under the provisions of this section, have in their possession a certificate on such form as approved by the commissioner from the dealer, which shall be valid for not more than forty-eight hours: Provided further, that motor vehicles, trailers and semi-trailers sold by dealers may be operated for a period not exceeding ten days from the date of sale by the purchaser thereof with dealer's demonstration plates, provided the purchasers have in their possession receipts from the dealers upon which the dealer has certified that the necessary amount of money to pay for titles and licenses has been paid by the purchasers to the dealers to be forwarded to the motor vehicle bureau, either direct or through one of its branch offices, on such form as approved by the commissioner.

(c) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person to be operated or moved upon a public highway without there being displayed upon such vehicle a number plate or plates issued to such person, either under section 2621(213) or under this section.

(d) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person or by any person in his employ, which is in the personal use of such person or employee, to be operated or moved upon a public highway with a "dealer" plate attached to such vehicle.

(e) Transfer of Dealer Registration. — No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of

the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used. (1937, c. 407, s. 43.)

§ 2621(230). **National guard plates.**—The commissioner of revenue shall cause to be made each year a sufficient number of automobile license plates to furnish each officer of the North Carolina National Guard with a set thereof, said license plates to be in the same form and character as other license plates now or hereafter authorized by law to be used upon private passenger vehicles registered in this state, except that such license plates shall bear on the face thereof the following words, "National Guard." The said license plates shall be issued only to officers of the North Carolina National Guard, and for which license plates the commissioner of revenue shall collect fees in an amount equal to the fees collected for the licensing and registering of private vehicles. The adjutant general of North Carolina shall furnish to the commissioner of revenue each year, prior to the date that licenses are issued, a list of the officers of the North Carolina National Guard, which said list shall contain the rank of each officer listed in the order of his seniority in the service, and the said license plates shall be numbered, beginning with the number two hundred and one and in numerical sequence thereafter up to and including the number five hundred, according to seniority, the senior officer being issued the license bearing the numerals two hundred and one. Upon transfer of the ownership of a private passenger vehicle upon which there is a license plate bearing the words national guard, said plates shall be removed and the authority to use the same shall thereby be canceled; however, upon application to the commissioner of revenue, he shall re-issue said plates to the officer of the national guard to whom the same were originally issued, and upon said re-issue the commissioner of revenue shall collect fees in an amount equal to the fees collected for the original licensing and registering of said private passenger vehicle as is now or may be prescribed by law. (1937, c. 407, s. 44.)

§ 2621(231). **Official license plates.**—Official license plates issued as a matter of courtesy to state officials shall be subject to the same transfer provisions as provided in section 2621(230). (1937, c. 407, s. 45.)

§ 2621(232). **Manufacturer to give notice of sale or transfer.**—Every manufacturer or dealer, upon transferring a motor vehicle, trailer or semi-trailer, whether by sale, lease or otherwise, to any person other than the manufacturer or dealer shall, on or before the tenth of each month, give written report of all such transfers made during the preceding calendar month to the department upon the official form provided by the department. Every such report shall contain the date of such transfer, the names and addresses of the transferer and transferee and such description of the vehicle as may be called for in such official form. Every manufacturer or dealer shall keep a record of all vehicles received or sold containing such information regarding same as the department may require. (1937, c. 407, s. 46.)

Part 6. Vehicles of Non-Residents of State, etc.

§ 2621(233). Registration by non-residents. —

(a) Non-residents of this state, except as otherwise provided in this article, will be exempt from the provisions of this article as to the registration of motor vehicles for the same time and to the same extent as like exemptions are granted residents of this state under laws of another state, district or territory: Provided, that they shall have complied with the provisions of the law of the state, district or territory of their residence relative to the registration and equipment of their motor vehicles, and shall conspicuously display the registration plates as required thereby, and have in their possession the registration certificates issued for such motor vehicles, and that nothing herein contained shall be construed to permit a bona fide resident of this state to use any registration plate or plates from a foreign state, district or territory, under the provisions of this section. The commissioner shall determine what exemptions the non-resident vehicle operators of the several states, districts or territories, are entitled to under the provisions of this section, and ordain and publish rules and regulations for making effective the provisions of this section, which rules and regulations shall be observed and enforced by all the officers of this state whose duties require the enforcement of the automobile registration laws, and any violations of such rules and regulations shall constitute a misdemeanor.

(b) Motor vehicles duly registered in a state or territory which are not allowed exemptions by the commissioner, as provided for in the preceding paragraph, desiring to make occasional trips into or through the state of North Carolina, may be permitted the same use and privileges of the highways of this state as provided for similar vehicles regularly licensed in this state, by procuring from the commissioner trip licenses upon forms and under rules and regulations to be adopted by the commissioner, good for use for a period of thirty days upon the payment of a fee in compensation for said privilege equivalent to one-tenth of the annual fee which would be chargeable against said vehicle if regularly licensed in this state: Provided, however, that nothing in this provision shall prevent the extension of the privileges of the use of the roads of this state to vehicles of other states under the reciprocity provisions provided by law: Provided further, that nothing herein contained shall prevent the owners of vehicles from other states from licensing such vehicles in the state of North Carolina under the same terms and the same fees as like vehicles are licensed by owners resident in this state.

(c) Every non-resident, including any foreign corporation carrying on business within this state and owning and operating in such business any motor vehicle, trailer or semi-trailer within this state, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state. (1937, c. 407, s. 47.)

§ 2621(234). Vehicles owned by state, municipalities or orphanages, etc.—The department, upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the state or any department

thereof, or by any county, township, city or town, or by any board of education, or by any orphanage, shall collect one dollar for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the state or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the state or some department thereof, or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. (1937, c. 407, s. 48.)

Part 7. Title and Registration Fees

§ 2621(235). Schedule of fees.—There shall be paid to the department for the issuance of certificates of title, transfer of registration and replacement of registration plates fees according to the following schedules:

- (a) Each application for certificate of title. .\$.50
 - (b) Each application for duplicate certificate of title50
 - (c) Each application of reposessor for certificate of title50
 - (d) Each transfer of registration..... 1.00
 - (e) Each set of replacement registration plates 1.00
- (1937, c. 407, s. 49.)

§ 2621(236). Penalty for engaging in a "for hire" business without proper license plates.—Any person, firm or corporation engaged in the business of transporting persons or property for compensation, except as otherwise provided in this article, shall, before engaging in such business, pay the license fees prescribed by this article and secure the license plates provided for vehicles operated for hire. Any person, firm or corporation operating vehicles for hire without having paid the tax prescribed or using private plates on such vehicles shall be liable for an additional tax of twenty-five dollars (\$25.00) for each vehicle in addition to the normal fees provided in this article. (1937, c. 407, s. 50.)

§ 2621(237). Passenger vehicle registration fees.—There shall be paid to the department annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(a) Franchise Bus Carriers.—Franchise bus carriers shall pay an annual license tax of ninety cents per hundred pounds weight of each vehicle unit, and in addition thereto six per cent of the gross revenue derived from such operation: Provided, said additional six per cent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax of ninety cents per hundred pounds: Provided further, that franchise bus carriers operated between point or points within this state and point or points without this state shall be required to account as compensation for the use of the highways of this state and the special privileges extended such carriers by this state in computing the six per cent tax, only on that proportion of the gross revenue, earned both within and with-

out this state, which corresponds to the proportion of mileage in this state as compared with the total mileage, but in no event shall the tax paid by such franchise bus carriers be less than ninety cents per hundred pounds weight for each vehicle.

(b) U-Drive-It Passenger Vehicles.—U-drive-it passenger vehicles shall pay the following tax: Motorcycles: 1-passenger capacity\$12.00
2-passenger capacity 15.00
3-passenger capacity 18.00
Automobiles: \$1.90 per hundred pounds weight of each vehicle.

(c) For Hire Passenger Vehicles.—For hire passenger vehicles shall be taxed at the rate of \$1.90 per hundred pounds of weight.

(d) Excursion Passenger Vehicles.—Excursion passenger vehicles shall be taxed at the rate of \$8.00 per passenger capacity, with a minimum charge of \$25.00, but such vehicles operating under a certificate as a restricted common carrier under chapter one hundred thirty-six of the Public Laws of one thousand nine hundred twenty-seven [§ 2613(j) et seq.], and amendments thereto, shall also be liable to the gross revenue six per cent tax to the extent it exceeds the tax herein levied under the same provisions provided for franchise bus carriers.

(e) Private Passenger Vehicles.—Private passenger vehicles shall be taxed at thirty-five cents per hundred pounds of weight or major fraction thereof, according to the manufacturer's shipping weight: Provided, that no fee for any private passenger vehicles shall be less than \$7.00.

(f) Private Passenger Motorcycles.—Private passenger motorcycles shall pay for each motorcycle \$5.00, and for each side car \$5.00.

(g) Manufacturers and Motor Vehicle Dealers.—Manufacturers and dealers in motor vehicles for demonstration tags shall pay as a registration fee and for one set of plates \$25.00, and for each additional set of plates \$1.00.

(h) Driveaway Companies.—Any person, firm or corporation engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this state for compensation shall pay as a registration fee and for one set of plates one hundred dollars (\$100.00) and for each additional set of plates five dollars (\$5.00). (1937, c. 407, s. 51.)

§ 2621(238). Property hauling vehicles. — (a) Determination of Weight.—For the purpose of licensing, the weight of the several classes of motor vehicles used for transportation of property shall be the gross weight and load, to be determined by the manufacturer's gross weight capacity as shown in an authorized national publication, such as "commercial car journal" or the statistical issue of "automotive industries," all such weights subject to verification by the commissioner or his authorized deputy, and if no such gross weight on any vehicle is available in such publication, then the gross weight shall be determined by the commissioner or his authorized agent: Provided, that any determination of weight shall be made only in units of one thousand pounds or major fraction thereof, weights of over five hundred pounds being counted as one thousand and weights of five hundred pounds or less being dis-

regarded. Semi-trailers licensed for use in connection with a truck or truck-tractor shall in no case be licensed for less gross weight capacity than the truck or truck-tractor with which it is to be operated.

(b) There shall be paid to the department annually, as of the first day of January, for the registration and licensing of trucks, truck-tractors, trailers and semi-trailers, fees according to the following classifications and schedules:

Schedule of Weights and Rates

Rate per hundred pounds gross weight:

	Private	Contract	Franchise
	Hauler	Hauler	Hauler
			(Deposit)
Gross weight not over			
4,500 pounds	\$0.30	\$0.75	\$0.60
4,501 pounds to 8,500 inclusive .....	.40	.75	.60
8,501 pounds to 12,500 pounds inclusive .....	.50	1.00	.60
12,501 pounds to 16,500 inclusive .....	.70	1.15	.60
Over 16,500 pounds .....	.80	1.40	.60

(c) The minimum rate for any vehicle licensed under this section shall be twelve dollars (\$12.00), except that the license fee for a trailer having not more than two wheels with a gross weight of vehicle and load not exceeding fifteen hundred (1500) pounds and towed by a passenger car shall be two dollars (\$2.00) for any part of the license year for which said license is issued, and the license fee for a two-wheel trailer the gross weight for vehicle and load of more than fifteen hundred (1500) pounds but not more than twenty-five hundred (2500) pounds and towed by a passenger car shall be ten dollars (\$10.00) for the entire year, subject to the provision for quarterly license as provided for other vehicles: Provided, however, that any such trailers operated for hire shall be taxed at the same rate as contract hauler vehicles.

(d) Rates on trucks, trailers and semi-trailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Franchise Haulers.—Franchise haulers shall pay an annual license tax as per the above schedule of rates for each vehicle unit, and in addition thereto six per cent of the gross revenue derived from such operation, except on vehicles licensed for inter-state routes and used exclusively for inter-state business where more than fifty per cent of the designated route lies outside of the state of North Carolina, the required deposit may be reduced by the commissioner to fifty per cent of the above schedule of rates as to deposit only: Provided, said additional six percent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax or deposit per the above schedule: Provided further, that franchise haulers operating between point or points within this state and point or points without this state shall be required to account as compensation for the use of the highway of this state and the special privileges extended such carriers by this state in computing the six per cent tax only on that proportion of the gross revenue earned both within and without this state which corresponds to the proportion of the mileage in

this state as compared to the total mileage, but in no event shall the tax paid by such franchise hauler be less than the license tax or deposit shown on the above schedule, except where a franchise is hereafter issued by the utilities commission for service over a route within the state which is not now served by any franchise hauler the six per cent gross revenue tax may be reduced to four per cent for the first two years only.

(f) Non-resident motor vehicle carriers which do not operate in intrastate commerce in this state, and the title to whose vehicles are not required to be registered under the provisions of this article, shall be taxed for the use of the roads in this state and shall pay the same fees therefor as are required with reference to like vehicles owned by residents of this state: Provided, that if any such fees as applied to non-residents shall at any time become inoperative, such carriers shall be taxed for the use of the roads of this state as franchise haulers as provided above: Provided further, that this provision shall not prevent the extension to vehicles of other states the benefits of the reciprocity provisions provided by law.

(g) Contract haulers under the definitions of this article who receive and operate under a certificate or permit or other authority from the utilities commissioner as restricted common carriers under the provisions of chapter one hundred thirty-six of the Public Laws of one thousand nine hundred twenty-seven [§ 2613(j) et seq.], and amendments thereto, shall, in addition to the rate of tax for contract carriers provided above, be subject to the gross six per cent tax to the extent that it exceeds the rate for contract haulers to be levied and collected in the same manner provided for franchise haulers, and the tax in the schedule provided for contract haulers shall be deemed a deposit only. (1937, c. 407, s. 52.)

§ 2621(239). Method of computing gross revenue of franchise bus carriers and haulers.—In computing the gross revenue of franchise bus carriers and franchise haulers, revenue derived from the transportation of United States mail or other United States government services shall not be included. All revenue earned both within and without this state from the transportation of persons or property, except as herein provided, collected by franchise bus carriers and franchise haulers, whether on fixed schedule routes or by special trips or by auxiliary vehicles not licensed as franchise haulers, whether owned by the franchise hauler or hired from another for the transportation of persons or property within the limits of the designated franchise route shall be included in the gross revenue upon which said tax is based. (1937, c. 407, s. 53.)

§ 2621(240). Due date of franchise tax.—The six per cent additional tax on franchise bus carriers and franchise haulers shall become due and payable on or before the twentieth day of the month following the month in which it accrues. (1937, c. 407, s. 54.)

§ 2621(241). Records and reports required of franchise carriers.—(a) Every franchise bus carrier and franchise hauler shall keep a record of all business transacted and all revenue received on such forms as may be prescribed by or satisfac-

tory to the commissioner of revenue, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the commissioner of revenue or his deputies or such other agents as may be duly authorized by the commissioner. Any operator of such a franchise line failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) All franchise bus carriers and franchise haulers shall, on or before the twentieth day of each month, make a report to the department of gross revenue earned and gross mileage operated during the month previous, in such manner as the department may require and on such forms as the department shall furnish.

(c) It shall be the duty of the commissioner of revenue, by competent auditors, to have the books and records of every franchise bus carrier and franchise hauler examined at least once each year to determine if such operators are keeping complete records as provided by this section of this article, and to determine if correct reports have been made to the state department of revenue covering the total amount of tax liability of such operators.

(d) If any franchise bus carrier or franchise hauler shall wilfully fail, neglect, or refuse to keep such records or to make such reports as required, and within the time provided in this article, the commissioner of revenue shall immediately inform himself as best he may as to all matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of the tax due the state from such delinquent operator for the period covering the delinquency, adding to the tax so determined and as a part thereof an amount equal to five per cent (5%) of the tax, to be collected and paid. The said commissioner shall proceed immediately to collect the tax including the additional five per cent (5%). (1937, c. 407, s. 55.)

§ 2621(242). Revocation of franchise registration.—The failure of any franchise bus carrier or any franchise hauler to pay any tax levied under this article, and/or to make reports as is required, shall constitute cause for revocation of registration and franchise, and the commissioner is hereby authorized to seize the registration plates of any such delinquent carrier and require the cessation of the operation of such vehicles. (1937, c. 407, s. 56.)

§ 2621(243). Bond or deposit required.—The commissioner, before issuing any registration plates to a franchise bus carrier or a franchise hauler, shall either satisfy himself of the financial responsibility of such carrier or require a bond or deposit in such amount as he may deem necessary to insure the collection of the tax imposed by this section. (1937, c. 407, s. 57.)

§ 2621(244). Partial payments.—In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars (\$400.00), half of such payment may be deferred until April first in any calendar year upon the execution to the commis-

sioner of a draft upon any bank or trust company upon forms to be provided by the commissioner in an amount equivalent to one-half of such tax, plus a carrying charge of two per cent (2%): Provided, that any person using any tag so purchased after the first day of April in any such year, without having first provided for the payment of such draft, shall be guilty of a misdemeanor. Any such drafts being dishonored and not paid shall be immediately turned over by the commissioner to his duly authorized agents and/or the state highway patrol, to the end that this provision may be enforced. (1937, c. 407, s. 58.)

§ 2621(245). **Quarterly payments.**—Licenses issued on or after April first of each year and before July first for all vehicles, except franchise haulers and two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be three-fourths of the annual fee. Licenses issued on or after July first and before October first, except two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be one-half the annual fee. Licenses issued on or after October first, except on two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be one-fourth of the annual fee. (1937, c. 407, s. 59.)

§ 2621(246). **Overloading.**—The commissioner, or his authorized agent, may allow any owner of a motor vehicle for transportation of property to overload said vehicle by paying the fee at the rate per hundred pounds which would be assessed against such vehicle if its gross weight capacity provided for such load; but such calculation shall be made only in units of one thousand pounds or major fraction thereof, excessive weights of five hundred pounds or less being disregarded and weights of more than five hundred pounds and not more than one thousand pounds being counted as one thousand. It is the intent of this section that every owner of a motor vehicle shall procure license in advance to cover any overload which may be carried. Any owner failing to do so, and whose vehicle shall be found in operation on the highways carrying an overload in excess of one ton over the weight for which such vehicle is licensed, shall pay in addition to the normal tax levied in this article an additional tax of three dollars (\$3.00) per each thousand pounds in excess of the licensed weight of such vehicle. (1937, c. 407, s. 60.)

§ 2621(247). **Taxes compensatory.** — (a) All taxes levied under the provisions of this article are intended as compensatory taxes for the use and privileges of the public highways of this state, and shall be paid by the commissioner to the state treasurer, to be credited by him to the state highway fund; and no county or municipality shall levy any license or privilege tax upon the use of any motor vehicle licensed by the state of North Carolina, except that cities and towns may levy not more than one dollar (\$1.00) per year upon any such vehicle resident therein.

(b) No additional franchise tax, license tax, or other fee shall be imposed by the state against any franchise motor vehicle carrier taxed under this article nor shall any county, city or town impose a franchise tax or other fee upon them.

(c) In addition to the appropriation carried in the Appropriations Act there shall be appropriated to the motor vehicle bureau the additional sum of fifteen thousand dollars (\$15,000.00) from the state highway fund: Provided, that such additional sum shall be made available only in the event that the regular appropriation is insufficient and it shall be determined by the director of the budget that such additional amount is necessary to carry out the provisions of this article. (1937, c. 407, s. 61.)

§ 2621(248). **Tax lien.**—In the distribution of assets in case of receivership or insolvency of the owner against whom the tax herein provided is levied and in the order of payment thereof, the state shall have priority over all other debts or claims except prior recorded liens or liens given by statute an express priority. (1937, c. 407, s. 62.)

§ 2621(249). **Collection by duress.**—Whenever any tax imposed by this article shall be in default for a period of ten days, it shall be the duty of the commissioner to certify the same to the sheriff of any county of this state in which such delinquent motor vehicle operator is operating, which said certificate to said sheriff shall have all the force and effect of a judgment and execution, and the said sheriff is hereby authorized and directed to levy upon any property in said county owned by said delinquent motor vehicle operator and to sell the same for the payment of said tax as other property is sold in the state for the non-payment of taxes; and for such services the sheriff shall be allowed the fees now prescribed by law for sales under execution, and the cost in such cases shall be paid by the delinquent taxpayer or out of the proceeds of the said property, and upon the filing of said certificate with the sheriff, in the event the delinquent taxpayer shall be the operator of any franchise bus carrier or franchise hauler vehicle, the franchise certificate issued to such operator shall become null and void and shall be canceled by the utilities commissioner, and it shall be unlawful for any such franchise bus carrier or the operator of any franchise hauler vehicle to continue the operation under said franchise. (1937, c. 407, s. 63.)

§ 2621(250). **Vehicles destroyed by fire or collision.**—Upon satisfactory proof to the commissioner that any motor vehicle, duly licensed, has been completely destroyed by fire or collision, the owner of such vehicle may be allowed on the purchase of a new license for another vehicle a credit equivalent to the unexpired proportion of the cost of the original license, dating from the first day of the next month after the date of such destruction. (1937, c. 407, s. 64.)

§ 2621(251). **Vehicles to be marked.**—All motor vehicles licensed as franchise bus carriers, franchise hauler vehicles and contract hauler vehicles, shall have printed on the side thereof in letters not less than three inches in height the name and home address of the owner, or such other identification as the utilities commissioner may approve. (1937, c. 407, s. 65.)

Part 8. Anti-Theft and Enforcement Provisions.

§ 2621(252). **Report of stolen and recovered motor vehicles.**—Every sheriff, chief of police, or

peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall immediately report such theft to the department. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the department. (1937, c. 407, s. 66.)

§ 2621(253). Reports by owners of stolen and recovered vehicles.—The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement. Every owner or other person who has given any such notice must notify the department of the recovery of such vehicle. (1937, c. 407, s. 67.)

§ 2621(254). Action by department on report of stolen or embezzled vehicles.—(a) The department, upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided, shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported, and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered.

(b) The department shall at least once each month compile and maintain at its headquarters office a list of all vehicles which have been stolen or embezzled or recovered as reported to it during the preceding month, and such lists shall be open to inspection by any peace officer or other persons interested in any such vehicle. (1937, c. 407, s. 68.)

§ 2621(255). Unlawful taking of a vehicle.—Any person who drives a vehicle, not his own, without the consent of the owner thereof, and with intent to temporarily deprive said owner of his possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, is guilty of a misdemeanor. (1937, c. 407, s. 69.)

§ 2621(256). Receiving or transferring stolen vehicles.—Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a felony. (1937, c. 407, s. 70.)

§ 2621(257). Injuring or tampering with vehicle.—(a) Any person who either individually or in association with one or more other persons

wilfully injures or tampers with any vehicles or brakes or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor.

(b) Any person who, with intent to steal, commit any malicious mischief, injury or other crime, climbs into or upon a vehicle, whether it is in motion or at rest, or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended, is guilty of a misdemeanor. (1937, c. 407, s. 71.)

§ 2621(258). Vehicles without manufacturer's numbers.—Any person who knowingly buys, receives, disposes of, sells, offers for sale, or has in his possession any motor vehicle, or engine removed from a motor vehicle, from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the department has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine is guilty of a misdemeanor. (1937, c. 407, s. 72.)

§ 2621(259). Altering or changing engine or other numbers.—No person shall with fraudulent intent deface, destroy, or alter the manufacturer's serial or engine number or other distinguishing number or identification mark of a motor vehicle, nor shall any person place or stamp any serial, engine, or other number or mark upon a motor vehicle, except one assigned thereto by the department. Any violation of this provision is a misdemeanor. (1937, c. 407, s. 73.)

§ 2621(260). When registration shall be rescinded.—(a) The department shall rescind and cancel the registration of any vehicle which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law.

(b) The department shall rescind and cancel the registration of any vehicle whenever the person to whom the registration card or registration number plates therefor have been issued shall make or permit to be made any unlawful use of the said card or plates or permit the use thereof by a person not entitled thereto.

(c) The department shall rescind and cancel the license of any dealer to whom such license has been issued when such dealer allows his registration number plates to be used for other than demonstration purposes except as provided by section 2621(229), fails to carry out the provisions of section 2621(229) and section 2621(232), or is convicted of a felony. (1937, c. 407, s. 74.)

§ 2621(261). Violation of registration provisions.—It shall be unlawful for any person to commit any of the following acts:

(a) To operate or for the owner thereof knowingly to permit the operation upon a highway of any motor vehicle, trailer, or semi-trailer which is not registered or for which a certificate of title has not been issued, or which does not have attached thereto and displayed thereon the registration number plate or plates assigned thereto by the department for the current registration

year, subject to the exemption mentioned in section 2621(229).

(b) To display or cause or permit to be displayed or to have in possession any registration card, certificate of title or registration number plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(c) The giving, lending, or borrowing of a license plate for the purpose of using same on some motor vehicle other than that for which issued shall make the giver, lender, or borrower guilty of a misdemeanor, and upon conviction he shall be fined not more than fifty dollars (\$50.00), or imprisoned not more than thirty days. Where license plate is found being improperly used, such plate or plates shall be revoked or canceled, and new license plates must be purchased before further operation of the motor vehicles.

(d) To fail or refuse to surrender to the department, upon demand, any title certificate registration card or registration number plate which has been suspended, canceled or revoked as in this article provided.

(e) To use a false or fictitious name or address in any application for the registration of any vehicle or for a certificate of title or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application. (1937, c. 407, s. 75.)

§ 2621(262). Making false affidavit perjury.—

Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this article to be sworn or affirmed to shall be guilty of perjury, and upon conviction shall be punishable by a fine and imprisonment as other persons committing perjury are punishable. (1937, c. 407, s. 76.)

§ 2621(263). Licenses protected.—No person, partnership, association or corporation shall maintain an office or place of business in which or through which persons desiring transportation for themselves or their baggage are brought into contact by advertisement or otherwise with persons owning or operating motor vehicles and willing to transport other persons, or baggage, for compensation, or on a division of expense basis, unless the owner or operator of such motor vehicles furnishing the transportation has qualified under the tax provisions of this article for the class of service he holds himself out to perform. (1937, c. 407, s. 77.)

§ 2621(264). Duty of officer; manner of enforcement.—(a) For the purpose of enforcing the provisions of this article, it is hereby made the duty of every police officer, every marshal, deputy marshal, or watchman of any incorporated city or village, and every sheriff, deputy sheriff, and all other lawful officers of any county, and every constable of any township, to arrest within the limits of their jurisdiction any person known personally to any such officer, or upon the sworn information of a creditable witness, to have violated any of the provisions of this chapter, and to immediately bring such offender before any justice of the peace or officer having jurisdiction, and any such person so arrested shall have the right of immediate trial, and all other rights given to any person arrested

for having committed a misdemeanor. Every officer herein named who shall neglect or refuse to carry out the duties imposed by this chapter shall be liable on his official bond for such neglect or refusal as provided by law in like cases.

(b) It shall be the duty of all sheriffs, police officers, deputy sheriffs, deputy police officers, and all other officers within the state to co-operate with and render all assistance in their power to the officers herein provided for, and nothing in this article shall be construed as relieving said sheriffs, police officers, deputy sheriffs, deputy police officers, and other officers of the duties imposed on them by chapter fifty-five (§ 2598 et seq.) of the Consolidated Statutes.

(c) It shall also be the duty of every sheriff of every county of the state and of every police or peace officer of the state to make immediate report to the commissioner of all motor vehicles reported to him as abandoned or that are seized by him for being used for illegal transportation of intoxicating liquors or other unlawful purposes, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice shall have been given the commissioner at least thirty days before the date of such sale. (1937, c. 407, s. 78.)

Part 9. The Size, Weight, Construction and Equipment of Vehicles

§ 2621(265). Scope and effect of regulations in this title.—It shall be unlawful and constitute a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this title, or any vehicle or vehicles which are not so constructed or equipped as required in this title, or the rules and regulations of the commission adopted pursuant thereto and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this article. (1937, c. 407, s. 79.)

§ 2621(266). Size of vehicles and loads. —(a) The total outside width of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in this section.

(b) No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(c) No vehicle unladen or with load shall exceed a height of twelve feet, six inches.

(d) No vehicle shall exceed a length of thirty-five feet extreme over-all dimension, inclusive of front and rear bumpers. A truck-tractor and semi-trailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(e) No combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of forty-five feet exclusive of front and rear bumpers, subject to the following exceptions: Said

length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at night-time by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided, that the state highway and public works commission shall have authority to designate any highways upon the state system as light-traffic roads when, in the opinion of the commission, such roads are inadequate to carry and will be injuriously affected by the maximum load, size, and/or width of trucks or busses using such roads as herein provided for, and all such roads so designated shall be conspicuously posted as light-traffic roads and the maximum load, size and/or width authorized shall be displayed on proper signs erected thereon. The operation of any vehicle whose gross load, size and/or width exceed the maximum shown on such signs over the roads thus posted shall constitute a misdemeanor: Provided further, that no standard concrete highway, or other highway built of material of equivalent durability, and not less than eighteen feet in width, shall be designated as a light-traffic road: Provided further, that the limitations placed on any road shall not be less than eighty per cent (80%) of the standard weight, unless there shall be available an alternate improved route of not more than twenty per cent (20%) increase in the distance.

(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle, if it is equipped with such a bumper.

(g) No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway. (1937, c. 407, s. 80.)

§ 2621(267). Flag or light at end of load. — Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red flag not less than twelve inches both in length and width, except that between one-half hour after sunset and one-half hour before sunrise there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear of such vehicle. (1937, c. 407, s. 81.)

§ 2621(268). Weight of vehicles and load.—No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limits specified below:

(a) When the wheel is equipped with high-pressure pneumatic, solid rubber or cushion tire, eight thousand pounds.

(b) When the wheel is equipped with low-pressure pneumatic tire, nine thousand pounds.

(c) The gross weight on any one axle of the vehicle when the wheels attached to said axle are equipped with high-pressure solid rubber or cushion tires, sixteen thousand pounds.

(d) When the wheels attached to said axle are equipped with low-pressure pneumatic tires, eighteen thousand pounds.

(e) For the purposes of this section an axle load shall be defined as the total load on all wheels whose centers are included within two parallel transverse vertical planes not more than forty inches apart.

(f) For the purposes of this section every pneumatic tire designed for use and used when inflated with air to less than one hundred pounds pressure shall be deemed a low-pressure pneumatic tire, and every pneumatic tire inflated to one hundred pounds pressure or more shall be deemed a high-pressure pneumatic tire.

(g) No vehicle shall be operated on any highway the weight of which, resting on the surface of such highway, exceeds six hundred pounds upon any inch of tire roller or other support.

(h) Subject to the foregoing limitations, the gross weight of any vehicle having two axles shall not exceed twenty thousand pounds.

(i) Subject to the foregoing limitations, the gross weight of any vehicle or combination of vehicles having three or more axles shall not exceed forty thousand pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes. (1937, c. 407, s. 82.)

§ 2621(269). Peace officer may weigh vehicle and require removal of excess load. — The state highway commission may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant for seasonal operations to operate or move a vehicle of a size or weight exceeding a maximum specified in this article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer; and it shall be a misdemeanor for any person to violate any of the terms or conditions of such special permit: Provided, the authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or width exceeding the maximum expressed in this article. (1937, c. 407, s. 83.)

§ 2621(270). When authorities may restrict right to use highways.—The state highway commission or local authorities may prohibit the operation of vehicles upon or impose restrictions as to the weight thereof, for a total period not to exceed ninety days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which the body adopting the ordinance is responsible, whenever any said highway by reason of deterioration, rain,

snow or other climatic conditions will be damaged unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. The local authority enacting any such ordinance shall erect, or cause to be erected and maintained, signs designing the provisions of the ordinance at each end of that portion of any highway to which the ordinance is applicable, and the ordinance shall not be effective until or unless such signs are erected and maintained. (1937, c. 407, s. 84.)

§ 2621(271). Restrictions as to tire equipment.

—(a) Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least one and a half inches thick above the edge of the flange of the entire periphery.

(b) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway and except, also, that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to slide or skid.

(c) The state highway commission or local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugation upon the periphery of such movable tracks or farm tractors or other farm machinery. (1937, c. 407, s. 85.)

§ 2621(272). Trailers and towed vehicles.

—(a) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semi-trailer.

(b) No trailer or semi-trailer shall be operated over the highways of the state unless such trailer or semi-trailer be firmly attached to the rear of the motor vehicle drawing same, and unless so equipped that it will not snake, but will travel in the path of the wheels of the vehicle drawing such trailer or semi-trailer, which equipment shall at all times be kept in good condition. (1937, c. 407, s. 86.)

§ 2621(273). Brakes.—(a) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop such vehicle or vehicles, and such brakes shall be maintained in good working order and shall conform to regulations provided in this section.

(b) No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the hand brake thereon, stopping the motor and turning the front wheels into the curb or side of the highway.

(c) On a dry, hard, approximately level stretch of highway free from loose material, the service (foot) brake shall be capable of stopping the motor vehicle at a speed of twenty miles per hour within a distance of twenty-five feet with four wheel brakes or forty-five feet with two wheel brakes. The hand brake shall be capable of stopping the vehicle under like conditions of this sec-

tion within a distance of not more than seventy-five feet.

(d) Motor trucks and tractor-trucks with semi-trailers attached shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within the following distances: thirty feet with both hand and service brake applied simultaneously and fifty feet when either is applied separately, except that vehicles maintained and operated permanently for the transportation of property and which were registered in this or any other state or district prior to August, nineteen hundred and twenty-nine, shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within a distance of fifty feet with both hand and service brake applied simultaneously, and within a distance of seventy-five feet when either applied separately.

(e) Every semi-trailer, or trailer, or separate vehicle, attached by a draw-bar or coupling to a towing vehicle, and having a gross weight of two tons, and all house trailers of one thousand pounds gross weight or more, shall be equipped with brakes controlled or operated by the driver of the towing vehicle, which shall conform to the specifications set forth in sub-section (d) of this section and shall be of a type approved by the commissioner. (1937, c. 407, s. 87.)

§ 2621(274). Horns and warning devices.—(a)

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped with or for any person to use upon a vehicle any siren, compression or spark plug whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonable loud or harsh sound by means of a horn or other warning device. All such horns and warning devices shall be maintained in good working order and shall conform to regulation not inconsistent with this section to be promulgated by the commissioner.

(b) Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren or exhaust whistle of a type approved by the commissioner. (1937, c. 407, s. 88.)

§ 2621(275). Mirrors.—No person shall drive a motor vehicle on a highway which motor vehicle is so constructed or loaded as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the driver's position, unless such vehicle is equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle, of a type to be approved by the commissioner. (1937, c. 407, s. 89.)

§ 2621(276). Windshields must be unobstructed.

—(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other non-transparent material upon the front windshield, side wings, side or rear window of

such motor vehicle other than a certificate or other paper required to be so displayed by law.

(b) Every permanent windshield on a motor vehicle shall be equipped with a device for cleaning snow, rain, moisture or other matter from the windshield directly in front of the operator, which device shall be so constructed as to be controlled or operated by the operator of the vehicle. The device required by this sub-section shall be of a type approved by the commissioner. (1937, c. 407, s. 90.)

§ 2621(277). Prevention of noise, smoke, etc., muffler cut-outs regulated.—(a) No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens.

(b) It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon a highway. (1937, c. 407, s. 91.)

§ 2621(278). Required lighting equipment of vehicles.—(a) When vehicles must be equipped: Every vehicle upon a highway within this state during the period from a half hour after sunset to a half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred feet ahead, shall be equipped with lighted front and rear lamps as in this section respectively required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in section 2621(283).

(b) Head Lamps on Motor Vehicles: Every motor vehicle other than a motorcycle, road-roller, road machinery, or farm tractor shall be equipped with two head lamps, no more and no less, at the front of and on opposite sides of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in section 2621(280) or 2621(281).

(c) Head Lamps on Motorcycles: Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations set forth in section 2621(280) or 2621(281).

(d) Rear Lamps: Every motor vehicle and every trailer or semi-trailer which is being drawn at the end of a train of vehicles shall carry at the rear a lamp of a type which has been approved by the commissioner and which exhibits a red light plainly visible under normal atmospheric conditions from a distance of five hundred feet to the rear of such vehicle, and so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be so illuminated by a white light as to be read from a distance of fifty feet to the rear of such vehicle, and every trailer or semi-trailer shall carry at the rear, in addition to a rear lamp as above specified, a red reflector of a type which has been approved by the commissioner and which is so designed, located as to a height and maintained as to be visible for at least five hundred feet when opposed by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Such reflector shall be placed at the extreme end of the load.

(e) Clearance Lamps: Every motor vehicle

having a width at any part in excess of eighty inches shall carry two clearance lamps on the left side of such vehicle, one located at the front and displaying an amber light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, and the other located at the rear of the vehicle and displaying a red light visible under like conditions from a distance of five hundred feet to the rear of the vehicle.

(f) Lamps on Bicycles: Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least three hundred feet in front of such bicycle, and shall also be equipped with a reflex mirror or lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least two hundred feet to the rear of such bicycle, when used at night.

(g) Lights on Other Vehicles: All vehicles not heretofore in this section required to be equipped with specified lighted lamps shall carry on the left side one or more lighted lamps or lanterns projecting a white light, visible under normal atmospheric conditions from a distance of not less than five hundred feet to the front of such vehicle and visible under like conditions from a distance of not less than five hundred feet to the rear of such vehicle, or in lieu of said lights shall be equipped with reflectors of a type which is approved by the commissioner. (1937, c. 407, s. 92.)

§ 2621(279). Additional permissible light on vehicle.—(a) Spot Lamps: Any motor vehicle may be equipped with not to exceed two spot lamps, except that a motorcycle shall not be equipped with more than one spot lamp, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than one hundred feet ahead of the vehicle. No spot lamps shall be used on the rear of any vehicle.

(b) Auxiliary Driving Lamps: Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in section 2621(280).

(c) Restrictions on Lamps: Any device, other than head lamps, spot lamps, or auxiliary driving lamps, which projects a beam of light of an intensity greater than twenty-five candle power, shall be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than fifty feet from the vehicle. (1937, c. 407, s. 93.)

§ 2621(280). Requirements as to head lamps and auxiliary driving lamps.—(a) The head lamps of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in sub-section (c) of this section, they will at all times mentioned in section 2621(278), and under normal atmospheric conditions and on a level road, produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but shall not project a glaring or dazzling light to persons in front of such head lamp.

(b) Head lamps shall be deemed to comply with the foregoing provisions prohibiting glaring and dazzling lights if none of the main bright portion

of the head lamp beams rises above a horizontal plane passing through the lamp centers parallel to the level road upon which the loaded vehicle stands, and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle.

(c) Whenever a motor vehicle is being operated upon a highway, or portion thereof, which is sufficiently lighted to reveal a person on the highway at a distance of two hundred feet ahead of the vehicle, it shall be permissible to dim the head lamps or to tilt the beams downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps, subject to the restrictions as to tilted beams and auxiliary driving lamps set forth in this sub-section.

(d) Whenever a motor vehicle meets another vehicle on any highway it shall be permissible to tilt the beams of the head lamps downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps subject to the requirement that the tilted head lamps or auxiliary lamp or lamps shall give sufficient illumination under normal atmospheric conditions and on a level road to render clearly discernible a person seventy-five feet ahead, but shall not project a glaring or dazzling light to persons in front of the vehicle: Provided, that at all times required in section 2621(278) at least two lights shall be displayed on the front of and on opposite sides of every motor vehicle other than a motorcycle, road-roller, road machinery, or farm tractor.

(e) No city or town shall enact an ordinance in conflict with this section. (1937, c. 407, s. 94.)

§ 2621(281). Acetylene lights.—Motor vehicles may be equipped with two acetylene head lamps of approximately equal candle power when equipped with clear plane glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners not more and not less and which do not project a glaring or dazzling light into the eyes of approaching drivers. (1937, c. 407, s. 95.)

§ 2621(282). Enforcement of provisions. — (a) The commissioner is authorized to designate, furnish instructions to and to supervise official stations for adjusting head lamps and auxiliary driving lamps to conform with the provisions of section 2621(278). When head lamps and auxiliary driving lamps have been adjusted in conformity with the instructions issued by the commissioner, a certificate of adjustment shall be issued to the driver of the motor vehicle on forms issued in duplicate by the commissioner and showing date of issue, registration number of the motor vehicle, owner's name, make of vehicle and official designation of the adjusting station.

(b) The driver of any motor vehicle equipped with approved head lamps, auxiliary driving lamps, rear lamps or signal lamps, who is arrested upon a charge that such lamps are improperly adjusted or are equipped with bulbs of a candle power not approved for use therewith, shall be allowed forty-eight hours within which to bring such lamps into conformance with the requirements of this article. It shall be a defense to any such charge that the person arrested produce in court or submit to the prosecuting attorney a certificate from an official adjusting station showing that within forty-eight hours after such arrest

such lamps have been made to conform with the requirements of this article. (1937, c. 407, s. 96.)

§ 2621(283). Lights on parked vehicles. — Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended during the times mentioned in section 2621(278), there shall be displayed upon such vehicle one or more lamps projecting a white light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, and projecting a red light visible under like conditions from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of two hundred feet upon such highway. (1937, c. 407, s. 97.)

§ 2621(284). Safety glass.—(a) It shall be unlawful to operate knowingly, on any public highway or street in this state, any motor vehicle which is registered in the state of North Carolina and which shall have been manufactured or assembled on or after January first, one thousand nine hundred and thirty-six, unless such motor vehicle be equipped with safety glass wherever glass is used in doors, windows, windshields, wings or partitions; or for a dealer to sell a motor vehicle manufactured or assembled on or after January first, one thousand nine hundred and thirty-six, for operation upon the said highways, or streets unless it be so equipped. The provisions of this article shall not apply to any motor vehicle if such motor vehicle shall have been registered previously in another state by the owner while the owner was a bona fide resident of said other state.

(b) The term "safety glass" as used in this article shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by glass when the glass is cracked or broken.

(c) The revenue department shall approve and maintain a list of the approved types of glass, conforming to the specifications and requirements for safety glass as set forth in this article, and in accordance with standards recognized by the United States bureau of standards, and shall not issue a license for or relicense any motor vehicle subject to the provisions of this article unless such motor vehicle be equipped as herein provided with such approved type of glass.

(d) The owner of any motor vehicle which is operated knowingly or any dealer who sells a motor vehicle in violation of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty-five dollars or be imprisoned not more than thirty days, or both, in the discretion of the court. (1937, c. 407, s. 98.)

§ 2621(285). Smoke screens.—(a) It shall be unlawful for any person or persons to drive, operate, equip or be in the possession of any automobile or other motor vehicle containing, or in any manner provided with, a mechanical machine or device designed, used or capable of being used for the purpose of discharging, creating or causing, in any manner, to be discharged or emitted

either from itself or from the automobile or other motor vehicle to which attached, any unusual amount of smoke, gas or other substance not necessary to the actual propulsion, care and keep of said vehicle, and the possession by any person or persons of any such device, whether the same is attached to any such motor vehicle, or detached therefrom, shall be prima facie evidence of the guilt of such person or persons of a violation of this section.

(b) Any person or persons violating the provisions of this section shall be guilty of a felony, and upon conviction shall be imprisoned in the state's prison for a period of not less than one year or not more than ten years, in the discretion of the court. (1937, c. 407, s. 99.)

Part 10. Operation of Vehicles and Rules of the Road

§ 2621(286). Persons under the influence of intoxicating liquor or narcotic drugs.—It shall be unlawful and punishable, as provided in section 2621(325), for any person, whether licensed or not, who is a habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs, to drive any vehicle upon the highways within this state. (1937, c. 407, s. 101.)

§ 2621(287). Reckless driving.—Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving, and upon conviction shall be punished as provided in section 2621(326). (1937, c. 407, s. 102.)

§ 2621(288). Speed restrictions.—(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Where no special hazard exists the following speeds shall be lawful, but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

1. Twenty miles per hour in any business district;
2. Twenty-five miles per hour in any residence district;
3. Thirty-five miles per hour for motor vehicles designed, equipped for, or engaged in transporting property, and thirty miles per hour for such vehicle to which a trailer is attached;
4. Forty-five miles per hour under other conditions.

(c) The fact that the speed of a vehicle is lower than the foregoing prima facie limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements

and the duty of all persons to use due care. It shall be unlawful to violate any provision of this section, and upon conviction shall be punished as provided in section 2621(326).

(d) Whenever the state highway and public works commission shall determine upon the basis of an engineering and traffic investigation that any prima facie speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said commission shall determine and declare a reasonable and safe prima facie speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway.

(e) The foregoing provisions of this section shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident.

(f) Whenever local authorities within their respective jurisdictions determine, upon the basis of an engineering and traffic investigation that the prima facie speed permitted under this article at any intersection is greater than is reasonable or safe under the conditions found to exist at such intersection, such local authority shall determine and declare a reasonable and safe prima facie speed limit thereat, which shall be effective when appropriate signs giving notice thereof are erected at such intersection or upon the approaches thereto.

(g) Local authorities in their respective jurisdictions may, in their discretion, authorize by ordinance higher prima facie speeds than those stated in sub-section (b) herein upon through highways or upon highways or portions thereof where there are no intersections or between widely spaced intersections: Provided, signs are erected giving notice of the authorized speed, but local authorities shall not have authority to modify or alter the basic rules set forth in sub-section (a) herein, or in any event to authorize by ordinance a speed in excess of forty-five miles per hour.

(h) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law. Police officers are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent wilful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith, the continued slow operation by a driver shall be a misdemeanor. (1937, c. 407, s. 103.)

§ 2621(289). Railroad warning signals must be obeyed.—Whenever any person driving a vehicle approaches a highway and interurban or steam railway grade crossing, and a clearly visible and positive signal gives warning of the immediate approach of a railway train or car, it shall be unlawful for the driver of the vehicle to fail to bring the vehicle to a complete stop before traversing such grade crossing. (1937, c. 407, s. 104.)

§ 2621(290). Vehicles must stop at certain railway grade crossings.—The road governing body (whether state or county) is hereby authorized to designate grade crossings of steam or

interurban railways by state and county highways, at which vehicles are required to stop, respectively, and such railways are required to erect signs thereat notifying drivers of vehicles upon any such highway to come to a complete stop before crossing such railway tracks, and whenever any such crossing is so designated and sign-posted it shall be unlawful for the driver of any vehicle to fail to stop within fifty feet, but not closer than ten feet, from such railway tracks before traversing such crossing. That no failure so to stop, however, shall be considered contributory negligence per se in any action against the railroad or interurban company for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff was guilty of contributory negligence: Provided, that all school trucks and passenger busses be required to come to a complete stop at all railroad crossings. (1937, c. 407, s. 105.)

§ 2621(291). Special speed limitation on bridges.—It shall be unlawful to drive any vehicle upon any public bridge, causeway or viaduct at a speed which is greater than the maximum speed which can with safety to such structure be maintained thereon, when such structure is sign-posted as provided in this section.

The state highway commission, upon request from any local authorities, shall, or upon its own initiative may conduct an investigation of any public bridge, causeway or viaduct, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this article, the commissioner shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet beyond each end of such structure. The findings and determination of the commission shall be conclusive evidence of the maximum speed which can with safety to any such structure be maintained thereon. (1937, c. 407, s. 106.)

§ 2621(292). When speed limit not applicable.—The speed limitations set forth in this article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. (1937, c. 407, s. 107.)

§ 2621(293). Drive on right side of highway.—Upon all highways of sufficient width, except upon one-way streets, the driver of a vehicle shall drive the same upon the right half of the highway, and shall drive a slow-moving vehicle as closely as possible to the right-hand edge or curb of such highway, unless it is impracticable to travel on such side of the highway and except when overtaking and passing another vehicle subject to the limitations applicable in overtaking and passing,

set forth in sections 2621(296) and 2621(297). (1937, c. 407, s. 108.)

§ 2621(294). Keep to the right in crossing intersections or railroads.—In crossing an intersection of highways or the intersection of a highway by a railroad right-of-way, the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the highway unless such right side is obstructed or impassable. (1937, c. 407, s. 109.)

§ 2621(295). Meeting of vehicles.—Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one-half of the main-traveled portion of the roadway as nearly as possible. (1937, c. 407, s. 110.)

§ 2621(296). Overtaking a vehicle.—(a) The driver of any such vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle.

(b) The driver of an overtaking motor vehicle not within a business or residence district, as herein defined, shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction. (1937, c. 407, s. 111.)

§ 2621(297). Limitations on privilege of overtaking and passing.—(a) The driver of a vehicle shall not drive to the left side of the center of a highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

(b) The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of five hundred feet.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any steam or electric railway crossing nor at any intersection of highway unless permitted so to do by a traffic or police officer.

(d) The driver of a vehicle shall not drive to the left side of the center line of a highway upon the crest of a grade or upon a curve in the highway where such center line has been placed upon such highway by the state highway commission, and is visible. (1937, c. 407, s. 112.)

§ 2621(298). Driver to give way to overtaking vehicle.—The driver of a vehicle upon a highway about to be overtaken and passed by another vehicle approaching from the rear, shall give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (1937, c. 407, s. 113.)

§ 2621(299). Following too closely.—(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.

(b) The driver of any motor truck, when traveling upon a highway outside of a business or residence district, shall not follow another motor truck within one hundred feet, but this shall not be construed to prevent one motor truck overtaking and passing another. (1937, c. 407, s. 114.)

§ 2621(300). Turning at intersection.—(a) Except as otherwise provided in this section, the driver of a vehicle intending to turn to the right at an intersection shall approach such intersection in the lane for traffic nearest to the right-hand side of the highway, and in turning shall keep as closely as practicable to the right-hand curb or edge of the highway, and when intending to turn to the left shall approach such intersection in the lane for the traffic to the right of and nearest to the center of the highway, and in turning shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left.

(b) For the purpose of this section, the center of the intersection shall mean the meeting point of the medial lines of the highways intersecting one another.

(c) Local authorities in their respective jurisdiction may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers or other directions signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed when such direction signs are authorized by local authorities. (1937, c. 407, s. 115.)

§ 2621(301). Signals on starting, stopping or turning.—(a) The driver of any vehicle upon a highway before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, "or by any approved mechanical or electrical signal device, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the department."

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn—hand and arm horizontal, forefinger pointing.

Right turn—hand and arm pointed upward.

Stop—hand and arm pointed downward.

All signals to be given from left side of vehicle during last fifty feet traveled. (1937, c. 407, s. 116.)

§ 2621(302). Right-of-way.—(a) When two vehicles approach or enter an intersection and/or junction at approximately the same time, the driver of the vehicle on the left shall yield the right-of-

way to the vehicle on the right except as otherwise provided in section 2621(303).

(b) The driver of a vehicle approaching, but not having entered an intersection and/or junction, shall yield the right-of-way to a vehicle within such intersection and turning therein to the left across the line of travel of such first mentioned vehicle: Provided, the driver of the vehicle turning left has given a plainly visible signal of intention to turn as required in section 2621(301).

(c) The driver of any vehicle upon a highway within a business or residence district shall yield the right-of-way to a pedestrian crossing such highway within any clearly marked cross-walk, or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices. (1937, c. 407, s. 117.)

§ 2621(303). Exceptions to the right-of-way rule.

—(a) The driver of a vehicle entering a public highway from a private road or drive shall yield the right-of-way to all vehicles approaching on such public highway.

(b) The driver of a vehicle upon a highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances when the latter are operated upon official business and the drivers thereof sound audible signal by bell, siren or exhaust whistle. This provision shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way. (1937, c. 407, s. 118.)

§ 2621(304). What to do on approach of police or fire department vehicles.—(a) Upon the approach of any police or fire department vehicle giving audible signal by bell, siren or exhaust whistle, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer until the police or fire department vehicle shall have passed.

(b) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm. (1937, c. 407, s. 119.)

§ 2621(305). Vehicles must stop at certain through highways.—(a) The state highway commission, with reference to state highways and local authorities, with reference to highways under their jurisdiction, are hereby authorized to designate main traveled or through highways by erecting at the entrance thereto from intersecting highways signs notifying drivers of vehicles to come to full stop before entering or crossing such designated highway, and whenever any such signs have been so erected it shall be unlawful for the driver of

any vehicle to fail to stop in obedience thereto. That no failure so to stop, however, shall be considered contributory negligence per se in any action at law for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff in such action was guilty of contributory negligence.

(b) No person operating any motor vehicle upon any path, private or public road shall cross or attempt to cross, enter upon, or attempt to enter upon any hard surface or improved highway intersecting the said path or road without first coming to a full stop: Provided, that this shall not apply to any road entering upon or crossing such hard surfaced or improved highway unless the road governing authority (whether state or county) controlling such highway shall erect on such road, at a point one hundred or more feet from the point of entrance into said highway, a signboard not less than four feet from ground on the right side of the road, twenty-four inches by twenty-four inches outside measurements, which shall be painted of yellow background with word "Stop" in black letters eight inches high, to insure warning of the proximity of the crossing and notice to stop said motor vehicle.

(c) This article shall not interfere with the regulations prescribed by towns and cities.

(d) No failure to so stop shall be considered contributory negligence per se in any action for injury to person or property; but the facts relating to such failure to stop may be considered with other facts in determining negligence.

(e) Any person violating the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars or imprisoned not more than ten days. (1937, c. 407, s. 120.)

§ 2621(306). Passing street cars.—(a) The driver of a vehicle shall not overtake and pass upon the left any street car proceeding in the same direction, whether actually in motion or temporarily at rest, when a travelable portion of the highway exists to the right of such street car.

(b) The driver of a vehicle overtaking any railway, interurban or street car stopped or about to stop for the purpose of receiving or discharging any passenger, shall bring such vehicle to a full stop not closer than ten feet to the nearest exit of such street car and remain standing until any such passenger has boarded such car or reached the adjacent sidewalk, except that where a safety zone has been established, then a vehicle may be driven past any such railway, interurban or street car at a speed not greater than ten miles per hour and with due caution for the safety of pedestrians. (1937, c. 407, s. 121.)

§ 2621(307). Driving through safety zone prohibited.—The driver of a vehicle shall not at any time drive through or over a safety zone as defined in part one of this article. (1937, c. 407, s. 122.)

§ 2621(308). Stopping on highway.—(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled portion of any highway, outside of a business or residence district, when it is practicable to park or leave such ve-

hicle standing off of the paved or improved or main traveled portion of such highway: Provided, in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of said highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of two hundred feet in both directions upon such highway: Provided further, that in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway bridge: Provided further, that in the event that a truck, trailer or semi-trailer be disabled upon the highway that the driver of such vehicle shall display, not less than two hundred feet in the front or rear of such vehicle, a warning signal; that during the hours from sunup to sundown a red flag shall be displayed, and after sundown red flares or lanterns. These warning signals shall be displayed as long as such vehicle is disabled upon the highways.

(b) Whenever any peace officer shall find a vehicle standing upon a highway in violation of the provisions of this section, he is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under this section.

(c) The provisions of this section shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such vehicle in such position. (1937, c. 407, s. 123.)

§ 2621(309). Parking in front of fire hydrant, fire station or private driveway.—No person shall park a vehicle or permit it to stand, whether attended or unattended, upon a highway in front of a private driveway or within fifteen feet in either direction of a fire hydrant or the entrance to a fire station, nor within twenty-five feet from the intersection of curb lines or if none, then within fifteen feet of the intersection of property lines at an intersection of highways. (1937, c. 407, s. 124.)

§ 2621(310). Motor vehicle left unattended; brakes to be set and engine stopped.—No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle, and, when standing upon any grade, without turning the front wheels of such vehicle to the curb or side of the highway. (1937, c. 407, s. 125.)

§ 2621(311). Driving on mountain highways.—The driver of a motor vehicle traversing defiles, canyons or mountain highways shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible, and upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with a horn or other warning device. (1937, c. 407, s. 126.)

§ 2621(312). Coasting prohibited.—The driver of a motor vehicle when traveling upon a down grade

upon any highway shall not coast with the gears of such vehicle in neutral. (1937, c. 407, s. 127.)

§ 2621(313). Duty to stop in event of accident.

—(a) The driver of any vehicle involved in an accident resulting in injury or death to any person shall immediately stop such vehicle at the scene of such accident, and any person violating this provision shall upon conviction be punished by a fine or imprisonment in the discretion of the court.

(b) The driver of any vehicle involved in an accident resulting in damage to property shall immediately stop such vehicle at the scene of such accident, and any person violating this provision shall upon conviction be punished as provided in section 2621(327).

(c) The driver of any vehicle involved in any accident resulting in injury or death to any person or damage to property shall also give his name, address, operator's or chauffeur's license number and the registration number of his vehicle to the person struck or the driver or occupants of any vehicle collided with, and shall render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, and it shall be unlawful for any person to violate this provision, and shall be punishable as provided in section 2621(327).

(d) The driver of any vehicle involved in any accident resulting in injuries or death to any person, or property damage to an apparent extent of ten dollars (\$10.00) or more, shall, within twenty-four hours, file or cause to be filed a report of such accident with the department, except that when such accident occurs within a city such report shall be made within twenty-four hours to the police department of such city. Every police department shall forward on the fifth day of each month every such report received during the previous calendar month, or a copy thereof, so filed with it to the main office of the department. All accident reports shall be made on forms approved by the department. With respect to any such accident involving a collision between any common carrier and another vehicle, such common carrier shall also make a report of the accident to the department, such report to be filed on or before the tenth day of the month following the accident.

(e) Where a person required to report an accident by the preceding subsection is physically incapable of making such report, and there is another occupant in the vehicle at the time of the accident, such occupant shall make the report.

The department may require drivers, or common carriers involved in accidents, to file supplemental reports, and may require witnesses of accidents to render reports to it upon forms furnished by it whenever the original report is insufficient in the opinion of the department.

All accident reports together with all supplemental reports above mentioned shall be without prejudice and shall be for the use of the department, and shall not be used in any manner whatsoever as evidence, or for any other purpose in any trial, civil or criminal, arising out of such accident: Provided, however, that all reports made by state, city or county police shall be subject to

inspection by members of the general public at all reasonable times. The department shall be required to furnish, upon demand of any court, a properly executed certificate stating that a specific accident report has or has not been filed with the department solely to prove a compliance with this section.

(f) The department shall prepare and shall upon request supply to police, coroners, sheriffs and other suitable agencies, or individuals, forms for accident reports calling for sufficiently detailed information to disclose with reference to a highway accident the cause, conditions then existing, and the persons and vehicles involved.

The department shall receive accident reports required to be made by this section and may tabulate and analyze such reports and publish annually, or at more frequent intervals, statistical information based thereon as to the number, cause and location of highway accidents.

Based upon its findings after such analysis, the department may conduct further necessary detailed research to more fully determine the cause and control of highway accidents. It may further conduct experimental field tests within areas of the state from time to time to prove the practicability of various ideas advanced in traffic control and accident prevention.

(g) Every person holding the office of coroner in this state shall, on the tenth day of each month, report to the department the death of any person during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of such accident. (1937, c. 407, s. 128.)

§ 2621(314). Vehicles transporting explosives.—

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.

(b) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The commissioner is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as he shall deem advisable for the protection of the public. (1937, c. 407, s. 129.)

§ 2621(315). Drivers of state, county and city vehicles subject to provisions of this article.—

The provisions of this article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by this state or any political sub-divisions thereof, or of any city, town or district, except persons, teams, motor vehicles and other equipment while actually engaged in work on the surface of the road, but not when traveling to or from such work. (1937, c. 407, s. 130.)

§ 2621(316). **Powers of local authorities.**—Local authorities, except as expressly authorized by section 2621(288) (g) and section 2621(303), shall have no power or authority to alter any speed limitations declared in this article or to enact or enforce any rule or regulations contrary to the provisions of this article, except that local authorities shall have power to provide by ordinances for the regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous and may prohibit other than one-way traffic upon certain highways, and may regulate the use of the highways by processions or assemblages and except that local authorities shall have the power to regulate the speed of vehicles on highways in public parks, but signs shall be erected giving notices of such special limits and regulations. (1937, c. 407, s. 131.)

§ 2621(317). **This article not to interfere with rights of owners of real property with reference thereto.**—Nothing in this article shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as matter of right from prohibiting such use nor from requiring other or different or additional conditions than those specified in this article or otherwise regulating such use as may seem best to such owner. (1937, c. 407, s. 132.)

Part 11. Pedestrians' Rights and Duties

§ 2621(318). **Pedestrians subject to traffic control signals.**—Pedestrians shall be subject to traffic control signals at intersections as heretofore declared in this article, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article. (1937, c. 407, s. 133.)

§ 2621(319). **Pedestrians' right-of-way at crosswalks.**—(a) Where traffic control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked cross-walk or within any unmarked cross-walk at an intersection, except as otherwise provided in this article.

(b) Whenever any vehicle is stopped at a marked cross-walk or at any unmarked cross-walk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (1937, c. 407, s. 134.)

§ 2621(320). **Crossing at other than crosswalks.**—(a) Every pedestrian crossing a roadway at any point other than within a marked cross-walk or within an unmarked cross-walk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked cross-walk.

(d) It shall be unlawful for pedestrians to walk

along the traveled portion of any highway except on the extreme left-hand side thereof, and such pedestrians shall yield the right-of-way to approaching traffic.

(e) Notwithstanding the provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (1937, c. 407, s. 135.)

§ 2621(321). **Pedestrians soliciting rides.**—No person shall stand in the travel portion of the highway for the purpose of soliciting a ride from the driver of any private vehicle. (1937, c. 407, s. 136.)

Part 12. Penalties

§ 2621(322). **Penalty for misdemeanor.**—(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this article unless such violation is by this article or other law of this state declared to be a felony.

(b) Unless another penalty is in this article or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of this article shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment: Provided, that upon conviction for the following offenses—operating motor vehicles without displaying registration number plates issued therefor; permitting or making any unlawful use of registration number plates, or permitting the use of registration by a person not entitled thereto, and violation of sections 2621(266)-2621(268), 2621(271)-2621(283), 2621(289)-2621(291), 2621(293)-2621(295), 2621(297)-2621(304), 2621(306)-2621(310), 2621(312) — the punishment therefor shall be a fine not to exceed fifty dollars (\$50.00) and not less than ten dollars (\$10.00), or imprisonment not to exceed thirty days for each offense. (1937, c. 407, s. 137.)

§ 2621(323). **Penalty for felony.**—Any person who shall be convicted of a violation of any of the provisions of this article herein or by the laws of this state declared to constitute a felony shall, unless a different penalty is prescribed herein or by the laws of this state, be punished by imprisonment in the state prison for a term not less than one year nor more than five years, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both fine and imprisonment. (1937, c. 407, s. 138.)

§ 2621(324). **Penalty for bad check.**—When any person, firm, or corporation shall tender any uncertified check for payment of any tax or fees found to be due by him under the provisions of this article, and such check shall have been returned to the commissioner unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, then in that event an additional tax shall be imposed equal to ten per cent of the fees due, and in no case shall the increase of said tax, because of said failure, be less than one dollar (\$1.00), and the said additional tax shall not be waived or diminished by the commissioner. (1937, c. 407, s. 139.)

§ 2621(325). Penalty for driving while under the influence of intoxicating liquor or narcotic drugs.—Every person who is convicted of violation of section 2621(286), relating to habitual users of narcotic drugs or driving while under the influence of intoxicating liquor or narcotic drugs, shall be punished by imprisonment in the county or municipal jail for not less than thirty days nor more than one year, or by fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment. On a second or subsequent conviction for the same offense he shall be punished by imprisonment for not more than two years or fined not more than one thousand dollars (\$1,000.00), or by both fine and imprisonment, in the discretion of the court. (1937, c. 407, s. 140.)

§ 2621(326). Penalty for reckless driving.—Every person convicted of reckless driving under section 2621(287) shall be punished by imprisonment in the county or municipal jail for a period of not more than six months, or by fine of not more than five hundred dollars (\$500.00), or by both such fine and imprisonment, and on a second or subsequent conviction of such offense shall be punished by imprisonment for not more than one year or by a fine of not less than fifty dollars nor more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment. (1937, c. 407, s. 141.)

§ 2621(327). Penalty for failure to stop in event of accident involving injury or death to a person.—Every person convicted of wilfully violating section 2621(313), relative to the duties to stop in the event of accidents, except as otherwise provided, involving injury or death to a person, shall be punished by imprisonment for not less than one nor more than five years, or in the state prison for not less than one nor more than five years, or by fine of not less than five hundred dollars or by both such fine and imprisonment. The commissioner shall revoke the operator's or chauffeur's license of the person so convicted. In no case shall the court have power to suspend judgment upon payment of costs. (1937, c. 407, s. 142.)

§ 2621(328). Duties and powers of law enforcement officers.—It shall be the duty of the law enforcement officers of the state and of each county, city, or other municipality to see that the provisions of this article are enforced within their respective jurisdictions, and any such officer shall have the power to arrest on sight or upon warrant any person found violating the provisions of this article. Such officers within their respective jurisdictions shall have the power to stop any motor vehicle upon the highways of the state for the purpose of determining whether the same is being operated in violation of any of the provisions of this article. (1937, c. 407, s. 143.)

§ 2621(329). Unconstitutionality or invalidity.—If any clause, sentence, paragraph, or part of this article shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

No caption of any section or set of sections shall in any way affect the interpretation of this article or any part thereof. (1937, c. 407, s. 144.)

§ 2621(330). Effective date.—This article shall be in full force and effect from and after its ratification, except that existing tax levies shall continue in effect until January first, one thousand nine hundred and thirty-eight, and on and after that date the modifications of existing rates provided for in part seven of this article shall supersede such existing rates. (1937, c. 407, s. 146.)

Art. 16. Sales of Used Motor Vehicles Brought into State

§ 2621(331). Dealers required to register vehicles with department of revenue and furnish bond.—Every dealer in used, or second-hand, motor vehicles who is a non-resident of the state of North Carolina or who does not have a permanent place of business in this State, and every person, firm or corporation who bring any used, or second-hand, motor vehicles into the state of North Carolina for the purpose of sale or re-sale, except as a trade-in on a new motor vehicle or another used car, shall, before offering the same for sale within ten days from the date of entry of said motor vehicle into the limits of the state of North Carolina, register such motor vehicle with the department of revenue on a form to be provided by said department and under such rules and regulations as may be promulgated by said department from time to time, and shall, before said used or second-hand car is offered for sale, or sold, execute a bond with two good sufficient sureties, or with a surety company duly authorized to do business in the state of North Carolina as a surety or sureties thereon, payable to the state of North Carolina, for the use and benefit of the purchaser and his vendees, conditioned to pay all loss, damages and expenses that may be sustained by the purchaser, and/or vendees, that may be occasioned by reason of the failure of the title of such vendor or by reason of any fraudulent misrepresentations or breaches of warranty as to freedom from liens, quality, condition, use or value of the motor vehicle being sold. Said bond shall be in the full amount of the sale price of each of such motor vehicles, but in no event to exceed the sum of one thousand (\$1,000.00) dollars for any one motor vehicle, and shall be filed with the department of revenue of the state of North Carolina by the vendor and be approved by it as to amount, form and as to the solvency of the surety or sureties, and for which service by said department, in registering said vehicle, the vendor shall pay the regular registration fee charged for the registration of motor vehicles and in addition thereto a fee of ten (\$10.00) dollars for each bond so filed and approved, which sums shall be paid into the state treasury to the credit of the general fund and expended as provided by law. (1937, c. 62, s. 1.)

§ 2621(332). Titles to all used cars to be furnished upon delivery.—Every person, firm or corporation, upon the sale and delivery of any used or second-hand motor vehicle, shall, at the time of the delivery of said vehicle, deliver to the vendee a certificate of title issued to the vendor by the North Carolina state department of revenue, duly

endorsed in order that the vendee may obtain a title therefor. (1937, c. 62, s. 2.)

§ 2621(333). Non-compliance defeats right of action; violations a misdemeanor. — No action, nor right of action to recover any such motor vehicle, nor any part of the selling price thereof shall be maintained in the courts of this state by any such dealer or vendor, his successors or assigns, in any case wherein such vendor or dealer shall have failed to comply with the terms and provisions of this article, and, in addition thereto, such vendor or dealer, upon conviction for the violation of any of the provisions of this article, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred (\$100.00) dollars and not more than five hundred (\$500.00) dollars, or by imprisonment for not less than thirty days, or more than six months, or by both such fine and imprisonment. (1937, c. 62, s. 3.)

§ 2621(334). "Dealers" and "vendors," defined. —The terms "dealers" and "vendors" herein used shall be construed to include every individual, partnership, corporation or trust whose business, in whole or in part, is that of selling used motor vehicles not taken in exchange for vehicles sold in this state, and likewise shall be construed to include every agent, representative, or consignee of any such dealer as defined above as fully as if same had been herein expressly set out, except that no agent, representative or consignee of such dealer or vendor shall be required to make and file the said bond if such dealer or vendor for whom such agent, representative or consignee acts fully complies in each instance with the provisions of this article. (1937, c. 62, s. 4.)

CHAPTER 56

MUNICIPAL CORPORATIONS SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917

Art. 1. General Powers

§ 2623. Corporate powers.

As to reconveyance of property donated for specific purpose, see § 1291(b).

Art. 2. Municipal Officers

Part. 3. Constable and Policeman

§ 2642. Policemen execute criminal process.

A policeman has the authority under general statute to deputize a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. Tomlinson v. Norwood, 208 N. C. 716, 182 S. E. 659. See §§ 4379 and 4547.

Art. 5. Municipal Taxation

§ 2677. Commissioners may levy taxes.

Tax on Firm Outside City. — In accord with original. See State v. Bridgers, 211 N. C. 235, 189 S. E. 869.

Art. 9. Local Improvements

§ 2707. What petition shall contain.

Applied in High Point v. Clark, 211 N. C. 607, 191 S. E. 318.

§ 2710. Assessments levied.

Where Charges for Water and Gas Connections Did Not Constitute a Preferred Claim. — Charges for water and gas connections, incurred during the lifetime of a life tenant and unpaid at his death, do not constitute a preferred claim against his estate as taxes assessed on the estate prior to his death, since in no event would such charges stand upon a higher plane than assessments for permanent improvements. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24.

§ 2711. Amount of assessment ascertained.

Applied in High Point v. Clark, 211 N. C. 607, 191 S. 318.

§ 2713. Hearing and confirmation; assessment lien.

Priority of Lien.

In accord with paragraph in original. See Winston-Salem v. Powell Paving Co., 7 F. Supp. 424.

The lien is an incumbrance within the meaning of the warranty clause against incumbrances. Winston-Salem v. Powell Paving Co., 7 F. Supp. 424, 427, citing Coble v. Dick, 194 N. C. 732, 140 S. E. 745.

Intention to Give Ad Valorem Tax Liens Preference over Other Liens. — A comparison of § 7987, and this section indicates the intention of the Legislature to give the ad valorem tax liens preference over any other liens, whether the same shall have attached prior or subsequent to the 1st day of June of the taxable year. Winston-Salem v. Powell Paving Co., 7 F. Supp. 424, 427.

And both sections should be construed in such way as to effectuate the intention of the Legislature. Id.

Thus the lien for street assessment, while superior to all other liens, whether existent or otherwise, does not defeat the right of the municipality or county to collect the annual ad valorem general taxes accruing on the same property. Id.

§ 2714. Appeal to the superior court.

Cited in High Point v. Clark, 211 N. C. 607, 191 S. E. 318.

§ 2717(b). Extension of time for payment of special assessments. — At any time or times prior to July the first, one thousand nine hundred and thirty-eight, the governing body of any city or town may adopt a resolution granting an extension of the time for the payment of any instalment or instalments of any special assessment, including accrued interest thereon and costs accrued in any action to foreclose under the lien thereon, by arranging such instalment or instalments, interest and costs into a new series of ten equal instalments so that one of said instalments shall fall due on the first Monday in October after the expiration of one year after adoption of the aforesaid resolution and one of said instalments on the first Monday in October of each year thereafter.

(1937, c. 172.)

Editor's Note. — The 1937 amendment substituted "thirty-eight" for "thirty-six" formerly appearing near the beginning of the first sentence. The rest of the section, not being affected by the amendment, is not set out.

For amendatory act applicable only to town of Carrboro, see Public Laws 1937, c. 195.

§ 2718. Assessments in case of tenant for life or years.

Since street and sidewalk assessments constitute a lien against the property not collectible out of other properties belonging to the owner, and since by this section a life tenant is not liable for the whole assessment, being entitled to have it proportioned under § 2720, upon the death of a life tenant such assessments made prior to his death do not constitute a preference against his estate under the third class of priority. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24. See § 93 and note.

§ 2720. Lien of party making payment.

See § 2718 of this Supplement and note thereto.

Art. 11. Regulation of Buildings

§ 2744(a). County electrical inspectors.—The county commissioners of each county may in their discretion designate and appoint an electrical inspector whose duty it shall be to inspect the installation of all wiring and other electrical installations in buildings located in any town of one thousand population or less and/or those buildings located outside of the corporate limits of all cities and towns and not otherwise included in this article, and to issue a certificate of inspection where such installations fully meet the requirements for such installations as set forth in this article, or such additional requirements as the board of county commissioners may prescribe. Nothing contained in this article shall be construed as prohibiting said board of county commissioners designating as county inspector any person who also has or may be designated as electrical inspector in any city or town located within said county, or from prohibiting two or more counties from designating the same inspector to perform the duties herein mentioned for such two or more counties. The county commissioners shall also fix the fees to be charged by such county inspector, which fees shall be paid by the owner of the properties so inspected. (1937, c. 57.)

Art. 11(A). Recreation Systems and Playgrounds

§ 2776(b). Power to dedicate property already owned; power to acquire property.

Municipal corporations are given authority by this section and §§ 2795 and 2787(12), to establish parks and playgrounds necessary to the maintenance of the health of their inhabitants, and an ordinance of a populous industrial city which provides for the issuance of bonds to establish and maintain parks and playgrounds for the children of the city was held a valid exercise of its police power under legislative authority for the promotion of the public health, safety, and morals. *Atkins v. Durham*, 210 N. C. 295, 186 S. E. 330.

Art. 11(C). Zoning Regulations

§ 2776(x). Board of adjustment.

Where Action of Board Does Not Constitute Res Judicata upon Second Application.—The approval by the Board of Adjustment of a denial of a permit to erect a filling station on certain land does not constitute res judicata upon a second application made thereafter three years after the first application upon substantial change of the traffic conditions. *In re Application of Broughton Estate*, 210 N. C. 62, 185 S. E. 434.

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917

Art. 15. Powers of Municipal Corporations

Part 1. General Powers Enumerated

§ 2787. Corporate powers.

Reference.—See note to § 2776(b) of this Supplement.
Ordinance Requiring Taxicab Operators to Secure Liability Insurance Does Not Violate Constitution.—An ordinance requiring operators of taxicabs or other motor vehicles for hire to secure liability insurance or enter into bond with personal or corporate surety is a valid exercise of the police power and expressly authorized by this section and does not violate the Fourteenth Amendment of the Federal Constitution, the operation of vehicles for gain being a special and extraordinary use of the city's streets, which it has the power to condition by ordinance uniform upon all coming within the classification. *Watkins v. Iseley*, 209 N. C. 256, 183 S. E. 365, citing *Packard v. Banton*, 264 U. S. 140, 68 L. Ed. 596, 44 S. Ct. 257.

Part 2. Power to Acquire Property

§ 2791. Acquisition by purchase.

Section Authorizes Paving of Dedicated Streets Outside City Limits.—This section gives a city the right to acquire streets "within or outside the city," and to "exercise the management and control of the streets," etc. The language is broad enough to give a city authority to pave streets outside the city that were dedicated to the city, there being no necessity to purchase same. *High Point v. Clark*, 211 N. C. 607, 612, 191 S. E. 318.

Part. 5. Protection of Public Health

§ 2795. Ordinances for protection of health; contracts for medical treatment and hospitalization of poor.

See note to § 2776(b) of this Supplement.
In accordance with the provisions of the last paragraph of this section the commissioners of a city proposed to enter into a contract with a public hospital providing for the payment by the city of the sum of \$10,000 a year for thirty years, in consideration of the agreement of the hospital to give medical care and hospitalization to the indigent sick and afflicted poor of the city, and to levy a tax to raise revenue sufficient to meet such payments. It was held that the proposed tax was for a necessary municipal expense, and the approval of the qualified voters of the city was not a prerequisite to the validity of the tax. *Martin v. Raleigh*, 208 N. C. 369, 180 S. E. 786.

Part 8. Water and Lights

§ 2808. Fix and enforce rates.

See note to § 2959 of this Supplement.

Art. 16. Exercise of Powers by Governing Body

Part 5. Control of Public Utilities

§ 2835(a). Profit on certain sales of electricity by one municipality to another.—Where any municipality within the state purchases electric current from a private utility and resells said current to any other municipality or municipalities over the lines which are owned by the municipality or municipalities purchasing from the first municipality, the municipality which purchases said current from a private utility shall not charge the municipality or municipalities purchasing from it more than ten per cent (10%) over and above what is paid by the first municipality to the private utility. (1937, c. 444.)

SUBCHAPTER III. MUNICIPAL FINANCE ACT

Art. 26. Permanent Financing

§ 2943. Sworn statement of indebtedness.

Reference.—See note to § 2959 of this Supplement.

§ 2947. Ordinance requiring popular vote.

Where Vote of Qualified Electors Not Necessary.—Where an ordinance for the issuance of bonds to establish and maintain playgrounds for children contained a provision which afforded the prescribed time for filing a petition under this section, and no petition was filed during such time, it was held that irrespective of such provision a vote of the qualified electors was not necessary, the bonds being a necessary expense within the meaning of Art. VII, § 7 of the Constitution. *Atkins v. Durham*, 210 N. C. 295, 186 S. E. 330.

§ 2959. Taxes levied for payment of bonds.

Net Revenue Derived from Revenue Producing Enterprise Should Be Applied to Bonds.—It is clear from a reading of this section that the Legislature intended that, where bonds were issued to enable a municipality to carry on a revenue producing enterprise, the net revenue derived from such enterprise should be applied to the payment of the interest and principal of such bonds. *George v. Asheville*, 80 F. (2d) 50, 53, 103 A. L. R. 568.

After Paying Operation and Maintenance Expenses.—

Where a waterworks system produces revenue, it is a revenue-producing enterprise; and, if net revenues are derived from it, after paying all expenses of operating, managing, maintaining, repairing, enlarging, and extending such system, this section requires that they be applied to the payment of the principal and interest due on the bonds issued "for such enterprise." *George v. Asheville*, 80 F. (2d) 50, 54, 103 A. L. R. 568.

The requirement that net revenues after paying the expenses of operation shall be applied on bonds does not mean that the discretionary control of waterworks vested in the city authorities by § 2808 is in any wise limited. *Id.*

Without Regard as to Time Bonds Are Issued.—There is nothing in this section which limits the application of the net revenue of a revenue-producing enterprise to bonds thereafter issued and there is no reason why the section should be so interpreted. The language of the section provides in the broadest possible terms that the net revenue from such an enterprise shall be applied on the principal and interest of bonds "issued for such enterprise," without limitation as to when such bonds may have been issued. *George v. Asheville*, 80 F. (2d) 50, 55, 103 A. L. R. 568.

Where Bonds Share Alike.—As this section clearly intended that such net revenues should be applied on the principal and interest of all bonds which were issued for the system, where the sewer system is an integral and essential part of the waterworks system and with it constitutes one revenue-producing enterprise, we think that sewer bonds should share along with waterworks bonds in the net revenues of the waterworks system. *George v. Asheville*, 80 F. (2d) 50, 54, 103 A. L. R. 568.

A revenue-producing enterprise is manifestly one which produces revenue, not necessarily one which produces profit or net revenue. *George v. Asheville*, 80 F. (2d) 50, 54, 103 A. L. R. 568.

Injunction to Restrain Diversion of Gross Revenues.—As net revenues can be effectively diverted in advance of their ascertainment by diversion of gross revenues, injunction should be granted to restrain the diversion of gross revenues, if it appears that net revenues are in danger of being diverted in this way. However, care should be taken so as not to trench upon the discretion of the municipal authorities in the management of the water and sewer system. *George v. Asheville*, 80 F. (2d) 50, 57, 103 A. L. R. 568.

If net revenue remains after payment of operating expenses such funds are thereafter held in trust to be applied as the statute directs, and any threatened diversion or misapplication should be enjoined. *Id.*

Bonds Not a Charge upon the Taxing Power of City.—As bonds in aid of the ordinary revenue-producing enterprises of a city, i. e., enterprises for furnishing water, gas, electric light, or power, were exempted from the debt limitation of § 2943, this shows that it was thought that, while the credit of the municipality would be pledged for bonds of this character, they would not be a charge upon the taxing power of the city but would be taken care of by the revenues of the enterprises for which they were issued. *George v. Asheville*, 80 F. (2d) 50, 54, 103 A. L. R. 568.

Art. 26A. Validation of Bonds

§ 2959(6). 1937 bond validating act.—This section may be cited as the "1937 Bond Validating Act."

The term "municipality" wherever used or referred to in this section shall mean any city, town, county, or sanitary district in this state.

All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking, or project by any municipality to which any loan or grant has heretofore been made by the United States of America, through the federal emergency administrator of public works, for the purpose of financing or aiding in the financing of such work, undertaking, or project, including all proceedings for the authorization and issuance of such bonds and the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any want of power of such municipality or governing body or commission, or officer thereof, of authority to issue such bonds, or sell, execute, or deliver the same, and notwithstanding any defects or

irregularities in such proceedings or in such sale, execution, or delivery; and such bonds are and shall be binding, legal, and enforceable obligations of such municipality: Provided, this section shall only have the effect of validating those bonds (1) which have at the time of the ratification of this section been sold to the United States of America or some of its agencies; or (2) sold with the approval of the local government commission. This section shall not apply to pending litigation. (1937, c. 428.)

Art. 27A. Emergency Municipal Bond Act

§ 2965(11). Application and construction of article.

Editor's Note.—Section 13 of the Acts of 1935, c. 426, provides that, "Nothing in this act shall be construed as repealing any general, special, or local law in conflict with this act."

This section is merely precautionary in that it expresses the legislative intent that all local laws shall remain in full force and effect except in cases where bonds are issued under this act to secure a loan from the Federal Government for a necessary expense. *Burt v. Biscoe*, 209 N. C. 70, 74, 183 S. E. 1.

Vote Not Necessary to Issuance of Bonds for Sewerage Purposes.—As the intent of this article is to expedite the issuance of bonds for projects constituting necessary municipal or county expenses for which the Federal Government offers a loan or grant by dispensing with a vote, notwithstanding the restrictions of any general, special, or private act, it was held that a vote was not necessary to the issuance of bonds for sewerage purposes by a municipality restricted by special statute. *Burt v. Biscoe*, 209 N. C. 70, 183 S. E. 1.

Art. 30. Municipal Fiscal Agency Act

§ 2969(k). Payment of fees to bank.

Editor's Note.—For act applicable only to Buncombe county, see Public Laws 1937, c. 320.

SUBCHAPTER IV. FISCAL CONTROL ACT AND COLLECTION OF TAXES

Art. 32. Fiscal Control Act

§ 2969(o). Terms in county fiscal control act made applicable to cities and towns.

Applied in *Standard Inv. Co. v. Snow Hill*, 78 F. (2d) 33.

CHAPTER 58

NEGOTIABLE INSTRUMENTS

Art. 1. General Provisions

§ 2976. Definitions.

Cited in *Pickett v. Fulford*, 211 N. C. 160, 189 S. E. 488.

Art. 2. Form and Interpretation

§ 3003. Effect of forged signature.

Where the clerk of the superior court executed a check to the person named in a court order, and the brother of the payee of the check, by fraudulently representing himself to be the payee, took the check to plaintiff and endorsed it in plaintiff's presence by forging the name of his brother, whereupon plaintiff endorsed the check by writing "O. K." and signing his name, plaintiff is not entitled to recover the amount of the check from the clerk individually or in his official capacity, plaintiff's negligence in endorsing the check without attempting to ascertain the identity of the person representing himself to be the payee barring any right to recover. *Keel v. Wynne*, 210 N. C. 426, 187 S. E. 571.

Art. 4. Negotiation

§ 3026. Presumption as to time of indorsement.

Cited in *Mansfield v. Wade*, 208 N. C. 790, 182 S. E. 475.

§ 3030. Effect of transfer without indorsement.

Where Assignee Is Not Holder in Due Course of a Collateral Note.—Where a note is assigned as collateral security for another note, and the assignee holds the collateral note without procuring the endorsement of the assignor until after the collateral note is past due, the assignee is not a holder in due course of the collateral note, and takes same subject to all equities existing in favor of the maker of the collateral note as against the payee who assigned same. *Hare v. Hare*, 208 N. C. 442, 181 S. E. 246.

Art. 5. Rights of Holder

§ 3033. What constitutes holder in due course.

Town as Holder in Due Course of Bonds.—Where a bank pledged certain bonds to secure the deposit of a town, the town acquired the bonds for value as security for a pre-existing indebtedness which is sufficient to constitute it a holder in due course within the meaning of this section. *Standard Inv. Co. v. Snow Hill*, 78 F. (2d) 33.

Holder of Note Obtaining Same by Indorsement after Maturity Is Not Holder in Due Course.—*Mansfield v. Wade*, 208 N. C. 790, 182 S. E. 475.

§ 3037. What constitutes notice of defect.

Applied in Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33.

§ 3038. Rights of holder in due course.

Stated in Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33.
Cited in Mansfield v. Wade, 208 N. C. 790, 182 S. E. 475.

§ 3039. When subject to original defenses.

Holder of Note after Maturity Takes Subject to Equities.—Where the holder of a negotiable note obtained same by endorsement after maturity, he takes same subject to equities, and the maker of the note may establish as against such holder that the note was paid before it was endorsed to and acquired by the holder. *Mansfield v. Wade*, 208 N. C. 790, 182 S. E. 475.

Purchaser after Maturity Takes Free of Agreement of Third Person to Pay Note.—A purchaser for value after maturity takes the note free from an agreement by a third person to pay the note when such third person was never a purchaser or holder of the note and the purchaser has no knowledge of such agreement between the maker and the third person. *Pickett v. Fulford*, 211 N. C. 160, 189 S. E. 488.

§ 3040. Who deemed holder in due course.

The burden rests upon the holder, when the title of a prior holder is shown to be defective, to show lack of knowledge of the defect. *Standard Inv. Co. v. Snow Hill*, 78 F. (2d) 33, 37.

Cited in Mansfield v. Wade, 208 N. C. 790, 182 S. E. 475; *Pickett v. Fulford*, 211 N. C. 160, 189 S. E. 488.

Art. 8. Notice of Dishonor

§ 3092. Who affected by waiver.

Endorser Is a "Party" to the Note.—An extension of time for payment of a note will not discharge an endorser when the note provides on its face that extension of time for payment is waived by all parties to the note, the endorser being a "party" to the note. *Vannoy v. Stafford*, 209 N. C. 748, 184 S. E. 482.

CHAPTER 59

NOTARIES

§ 3175(a). Notaries public, who are stockholders, etc., permitted to take acknowledgments, administer oaths, etc.—It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation, or to protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes and other negotiable instruments

which may be owned or held for collection by such corporation: Provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is individually a party to such instrument, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument. (1937, c. 183.)

CHAPTER 60

NUISANCES AGAINST PUBLIC MORALS

§ 3180. What are nuisances under this chapter.

Cited, in dissenting opinion, in Newman v. Watkins, 208 N. C. 675, 182 S. E. 453.

CHAPTER 62

OFFICERS AND PUBLIC OFFICERS

Art. 1. General Provisions

§ 3202(1). Receiving compensation of subordinates for appointment or retention; removal.—Any official or employee of this state or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by sections three thousand two hundred and eight and three thousand two hundred and twelve, inclusive, of the Consolidated Statutes of North Carolina. (1937, c. 32, ss. 1, 2.)

§ 3207(a). Identification cards for field agents or deputies of state departments.—Every field agent or deputy of the various state departments who is authorized to collect money, audit books, inspect premises of individual or business firms and/or any other field work pertaining to the department which he represents, shall be furnished with an identification card signed by the head of the department represented by him, certifying that the said field agent or deputy has authority to represent the department, and such identification card shall carry a photographic likeness of said representative. (1937, c. 236.)

Art. 2. Removal of Unfit Officers

§ 3208. Officers subject to removal; for what offenses.

As to removal for receiving compensation of subordinates, see § 3202(1).

CHAPTER 63

PARTITION

Art. 1. Partition of Real Property

§ 3213. Partition is a special proceeding.

Tenant in Common Entitled to Partition.—Ordinarily, a tenant in common in realty or personality is entitled to partition of the property. *Chadwick v. Blades*, 210 N. C. 609, 188 S. E. 198.

§ 3215. Petition by cotenant.

I. IN GENERAL.

Tenants in common may make a valid agreement, either at the time of the creation of the tenancy or afterwards, whereby the right to partition is modified or limited, provided the waiver of the right to partition is not for an unreasonable length of time. *Chadwick v. Blades*, 210 N. C. 609, 188 S. E. 198. See also, 15 N. C. Law Rev., No. 3, p. 279.

§ 3219. Commissioners appointed.

Confirmation and Approval by Two Appraisers Held Error.—Testator's children selected three appraisers in accordance with the will, but prior to final report one of the appraisers died, whereupon the court ordered the two surviving appraisers to complete the appraisal and file report, which report was later approved by the court. It was held that under the terms of the will and under this section, it is necessary that three appraisers act in the matter, and the superior court should have appointed a third appraiser, and the confirmation and approval of the report based upon the findings of but two appraisers is reversible error. *Sharpe v. Sharpe*, 210 N. C. 92, 185 S. E. 634.

§ 3225. Partition where shareowners unknown or title disputed; allotment of several shares of two or more tenants as one parcel in common.—

If two or more tenants in common, or joint tenants, by petition or answer, request it, the commissioners may, by order of the court, allot their several shares to them in common, as one parcel, provided such division shall not be injurious or detrimental to any co-tenant or joint tenant. (Rev., ss. 2491, 2511; Code, s. 1894; 1868-9, c. 122, s. 3; 1887, c. 284, ss. 2, 4; 1937, c. 98.)

Editor's Note.—The 1937 amendment added the above provision at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

While the primary purpose of the partition proceeding is to allot to each of the former cotenants his share of the property in severalty, this amendment by no means militates against such purpose but makes it possible for some of the former cotenants, who find it economically desirable, to have their several shares allotted to them as one parcel so that they may again hold as cotenants that parcel of land. 15 N. C. Law Rev., No. 4, p. 355.

§ 3228. Report of commissioners; contents; filing.

Under this section, two commissioners can make the report, but the parties whose rights are to be effected have the right to have three disinterested parties appointed under the will or statute, so that the three can consider the questions involved. *Sharpe v. Sharpe*, 210 N. C. 92, 98, 185 S. E. 634.

Art. 2. Partition Sales of Real Property

§ 3233. Sale in lieu of partition.

Under this section the burden is on the party seeking sale for partition to show necessity therefor, and where sale for partition is decreed by the court without hearing evidence or finding facts to show the right to sell, the cause will be remanded. *Wolfe v. Galloway*, 211 N. C. 361, 190 S. E. 213.

§ 3243. Report of sale; filing; confirmation and impeachment.—Such officer or person shall file his report of sale, giving full particulars thereof, within ten days after the sale, in the office of the clerk of the superior court, and if no exception thereto is filed within ten days, the same shall be confirmed. Any party, after the con-

fimation, shall be allowed to impeach the proceedings and decrees for mistake, fraud or collusion, by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby. (Rev., s. 2513; Code, s. 1906; 1899, c. 161; 1868-9, c. 122, s. 15; 1937, c. 71.)

Editor's Note.—The 1937 amendment reduces the time for filing exceptions from twenty to ten days. The proceedings are thus speeded up, and it is now possible for the partition sale to be confirmed within 20 days after it is held instead of 30 days as formerly required. 15 N. C. Law Rev., No. 4, p. 355.

Art. 4. Partition of Personal Property

§ 3253. Personal property may be partitioned; commissioners appointed.

Quoted in *Chadwick v. Blades*, 210 N. C. 609, 188 S. E. 198.

§ 3255. Sale of personal property on partition; report of officer.

Cited in *Chadwick v. Blades*, 210 N. C. 609, 188 S. E. 198.

CHAPTER 64

PARTNERSHIP

Art. 1. Limited Partnership

§ 3258. Purposes for which formed.—Limited partnership for the transaction of any mercantile, manufacturing or mechanical business within the state may be formed by two or more persons, upon the terms and with the rights and powers and subject to the conditions and liabilities in this chapter; but its provisions shall not be construed to authorize any such partnership for the conducting of a banking or insurance business, other than writing or soliciting insurance. A general partnership may be converted into a limited partnership in the manner and for the purposes provided in this article. (Rev., s. 2521; Code, s. 3088; 1860-1, c. 28; 1937, c. 308, s. 1.)

Editor's Note.—The 1937 amendment added the provision as to conversion of general into limited partnership.

§ 3259. General and special partners; liability.

—Such partnerships may consist of one or more persons, who are general partners, and are jointly and severally responsible as partners are now by law, and of one or more persons, who contribute in actual cash payments a specific sum, or property at its fair value, as capital to the common stock, who are called special partners, and who are not liable for the debts of the partnership beyond the funds so contributed to the capital. (Rev., s. 2522; Code, s. 3089; 1860-1, c. 28, s. 2; 1937, c. 308, s. 2.)

Editor's Note.—The words "or property at its fair value," were inserted by the 1937 amendment.

§ 3262. Affidavit as to cash payment.—At the time the certificate is ordered to be registered an affidavit of one or more of the general partners shall be made before the officer taking such acknowledgment, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually in good faith paid in cash or property at its fair value, and the affidavit so made shall be registered with the original certificate. (Rev., s. 2525; Code, s. 3093; 1860-1, c. 28, s. 6; 1937, c. 308, s. 3.)

Editor's Note.—The words "or property at its fair value," were inserted in this section by the 1937 amendment.

CHAPTER 65

PROBATE AND REGISTRATION

Art. 1. Probate

§ 3303. Proof of attested writing.—

Provided, that no instrument required or permitted by law to be registered shall be proved, probated or ordered to be registered upon the oath and examination of a subscribing witness who is also the grantee named in said instrument, and the registration of any instrument which has been proven and admitted to probate upon the oath and examination of a subscribing witness who is the grantee in said instrument shall be void: Provided further, that nothing herein shall invalidate the registration of any instrument registered prior to the ninth day of April, A.D. one thousand nine hundred and thirty-five. (Rev., s. 997; 1899, c. 235, s. 12; 1935, c. 168; 1937, c. 7.)

Editor's Note.—As the 1937 amendment made changes only in the provisos of this section, the first sentence is not set out here. The amendment omitted the prohibition of registration of an instrument if the witness attesting its execution is the agent or servant of the grantee. This is proper since the interest, if any, of such a witness would seem to be rather remote. It also omitted a former proviso applying the section to agricultural liens. This omission is quite logical since the statute is applicable to all instruments "required or permitted by law to be registered," and agricultural liens fall within such a category. 15 N. C. Law Rev., No. 4, p. 337.

Art. 2. Registration

§ 3308. Probate and registration sufficient without livery.

Evidence Supporting Judgment for Recovery of Land.—Evidence showing good record title in plaintiff, without any record evidence of title in defendant, held to support judgment for plaintiff for recovery of land. Knowles v. Wallace, 210 N. C. 603, 188 S. E. 195.

§ 3309. Conveyances, contracts to convey, and leases of land.

I. IN GENERAL.

Quoted in Tucker v. Almond, 209 N. C. 333, 183 S. E. 407.

V. NOTICE.

No Notice Will Supply Want of Registration.—

In accord with original. See Knowles v. Wallace, 210 N. C. 603, 188 S. E. 195.

§ 3311. Deeds of trust and mortgages, real and personal.

I. IN GENERAL.

The courts of this state have adopted a strict policy in regard to notice and registration in order to encourage immediate and proper recording. 15 N. C. Law Rev., No. 2, p. 166.

This section is a substitute for possession by the mortgagee. If the mortgagee as such takes possession of the mortgaged property, it renders registration unnecessary. Possession, in such circumstances, will render the mortgage as good as it would be if registered. Coggin v. Hartford Acci., etc., Co., 9 F. Supp. 785, 788, citing Cowan v. Dale, 189 N. C. 684, 128 S. E. 155.

If possession is to be substituted for registration under this section, it seems that the possession should be by virtue of the mortgage. Coggin v. Hartford Acci., etc., Co., 9 F. Supp. 785, 788.

In the instant case, the record shows very clearly that possession of the property was not taken in the capacity of mortgagee. The defendant obtained possession by promising the contractor a preference when letting the contract for completion. The motive of the bankrupt, to the knowledge of surety, was to perpetuate a fraud on his creditors. The transaction is void and cannot supply the place of registration. Id.

Valid Mortgage Not Constituting a Preference.—The mortgage was executed for a valuable consideration years before the filing of petition in bankruptcy, through inadvertence and without fraud, it was not recorded until within four months from the filing of petition, but no lien having

attached, and no proof of insolvency of bankrupt at time of recording mortgage, the mortgage is valid and does not constitute a preference. In re Finley, 6 F. Supp. 105, 106.

No Inference of Fraud Where Contracts of Road Contractor Were Not Recorded.—In Hartford Acci., etc., Co. v. Coggin, 78 F. (2d) 471, 476, it was held that no inference of fraud could fairly be drawn from the failure to record application contracts of road contractor containing chattel mortgage provisions, especially in view of the publicity and general knowledge that attends public works.

II. REGISTRATION AS BETWEEN PARTIES.

Between the Parties—Valid without Registration.—

In accord with original. See In re Finley, 6 F. Supp. 105.

IV. RIGHTS OF PERSONS PROTECTED.

General Creditors Not Protected.—

In accord with original. See In re Finley, 6 F. Supp. 105, 106.

Where Right of Surety Is Superior to That of Trustee in Bankruptcy.—Where no creditor has secured a lien upon the property of a road contractor prior to bankruptcy, the transfer of possession of the property to the surety-mortgagee before bankruptcy had the same effect under the North Carolina law as if the mortgage had been recorded. Cowan v. Dale, 189 N. C. 684, 128 S. E. 155. It follows that the right of the surety to the property transferred is superior to the claim of the trustee in bankruptcy. Hartford Acci., etc., Co. v. Coggin, 78 F. (2d) 471, 476.

Applications of Road Contractor Not Valid as against Trustee without Registration.—Applications of road contractor in so far as they profess to convey property, are chattel mortgages and are not valid as against the trustee without registration. Coggin v. Hartford Acci., etc., Co., 9 F. Supp. 785, 787, citing Commercial Cas. Ins. Co. v. Williams, 37 F. (2d) 326.

Chattel Mortgage Good against Purchasers and Creditors Only from Registration.—Under this section a chattel mortgage is good against bona fide purchasers for value and against creditors only from registration. A general creditor must yield to the lien of the mortgage from the moment of its registration, unless the lien can be successfully assailed as a fraudulent conveyance. Coggin v. Hartford Acci., etc., Co., 9 F. Supp. 785, 787.

Before a creditor can defeat the lien of the mortgage properly registered he must acquire a prior lien by way of judgment, as against land, and by levying an execution against personal property. Id.

Application contracts containing a conveyance whereby a road contractor as of the date thereof assigns, transfers, and conveys to the surety, all his right, title, and interest in the tools, plant, equipment, and materials that he may then or thereafter have upon the work, authorizing and empowering the surety and its agents to enter upon and take possession thereof, are chattel mortgages within the meaning of this recordation statute. Hartford Acci., etc., Co. v. Coggin, 78 F. (2d) 471, 474.

§ 3311(1). Blank or master forms of mortgages, etc., embodiment by reference in instruments later filed.

The scheme authorized by this section has obvious advantages and disadvantages. The advantages lie in the shortening of the later instruments. There will be some saving in recordation fees to persons and corporations giving or taking numerous deeds, deeds of trust, and mortgages, especially documents of a bulky character, such as some corporate mortgages. The disadvantages are that persons concerned with the subsequent documents will be obliged to examine the record of the master form in order to be sure what the provisions of the documents are. Furthermore, if single provisions as distinguished from all the provisions of the master form may be incorporated by reference to the master form, the device is dangerous. 13 N. C. Law Rev., No. 4, p. 395.

It is hard to see why the section authorizes specifically a master form for mortgages and deeds of trust, but does not mention deeds. Deeds are included in the words "other instrument conveying an interest in—real and/or personal property," but so are mortgages. The intent to include deeds is made clear, however, by the specific mention of them among the instruments which may incorporate the provisions of the master form. 13 N. C. Law Rev., No. 4, p. 396.

Conditional sales are doubtless covered by the statute, both because in North Carolina they are "mortgages" and because they are instruments "conveying an interest in, or creating a lien on," personal property. Various other security devices, such as trust receipts are included for similar reasons. So also bills of sale are obviously instruments "conveying an interest in" personal property. Id.

§ 3315. Deeds of gift.

Unregistered Deed Void Regardless of Fraud.—Where a deed appearing on its face to be a deed of gift is not registered in two years from its execution as required by this section, it is void, and may be set aside in an action by creditors of the grantor regardless of whether it was executed in default of creditors. *Reeves v. Miller*, 209 N. C. 362, 183 S. E. 294.

Applied in *Allen v. Allen*, 209 N. C. 744, 184 S. E. 485.

§ 3319(b). Copies of deeds made by alien property custodian may be registered; admissible in evidence.—Any copy of a deed made, or purporting to be made, by the United States alien property custodian duly certified pursuant to Title twenty-eight, section six hundred sixty-one of United States Code by the department of justice of the United States, with its official seal impressed thereon, when the said certified copy reveals the fact that the execution of the original was acknowledged by the alien property custodian before a notary public of the District of Columbia, and that the official seal of the alien property custodian by recital was affixed or impressed on the original, and further reveals it to have been approved, as to form, by general counsel, and the copy also shows that the original was signed and approved by the acting chief, division of trusts, and was witnessed by two witnesses, shall, when presented to the register of deeds of any county wherein the land described therein purports to be situate, be recorded by the register of deeds of such county without other or further proof of the execution and/or delivery of the original thereof, and the same when so recorded shall be indexed and cross-indexed by the register of deeds as are deeds made by individuals upon the payment of the usual and lawful fees for the registration thereof.

The record of all such recorded copies of such instruments shall be received in evidence in all the courts of this state and the courts of the United States in the trial of any cause pending therein, the same as though and with like effect as if the original thereof had been probated and recorded as required by the law of North Carolina, and the record in the office of register of deeds of such recorded copy of such an instrument shall be presumptive evidence that the original of said copy was executed and delivered to the vendee, or vendees therein named, and that the original thereof has been lost or unintentionally destroyed without registration, and in the absence of legal proof to the contrary said so registered copy shall be conclusive evidence that the United States alien property custodian conveyed the lands and premises described in said registered copy to the vendees therein named, as said copy reveals, and title to such land shall pass by such recorded instrument. (1937, c. 5, ss. 1, 2.)

Art. 4. Curative Statutes; Acknowledgments; Probates; Registration

§ 3366(j5). Acknowledgments of notary holding another office.—In every case where deeds or other instruments have been acknowledged before a notary public, when the notary public at the time was also holding some other office, and the deed or other instrument has been duly probated and recorded, such acknowledgment taken by such notary public is hereby declared to be sufficient and valid: Provided, this section

shall not affect vested rights or pending litigation. (1935, c. 133; 1937, c. 284.)

Editor's Note.—The 1937 amendment re-enacted this section without change.

§ 3366(j6). Acknowledgment and private examination of married woman taken by officer who was grantor.—In all cases where a deed or deeds of mortgages or other conveyances of land dated prior to the first (1st) day of January, one thousand nine hundred and twenty-six (1926), purporting to convey lands have been registered in the office of the register of deeds of the county where the lands conveyed in said deeds are located prior to said first (1st) day of January, one thousand nine hundred and twenty-six (1926), and the acknowledgments or proof of execution of such deed or deeds and the private examination of any married woman who is a grantor in such deed or deeds have been taken as to some of the grantors, and the private examination of any married woman grantor in such deed has been taken by an officer who was himself one of the grantors named in such deed or deeds, such defective execution, acknowledgment, proof of execution and the private examination of such married woman, evidenced by the certificate thereof on such deed and the registration thereof as above described and set forth, shall be and the same are hereby declared to be in all respects valid, and such deed or deeds or other conveyances of land are declared to be in all respects duly executed, probated and recorded to the same effect as if such officer taking such proof or acknowledgment of execution or taking the private examination of such married woman and certifying thereto upon such deed or deeds had not been named as grantor therein and had not been interested therein in any way whatsoever: Provided this section shall not apply to pending litigation. (1937, c. 91.)

CHAPTER 66

PROHIBITION AND REGULATION OF INTOXICATING LIQUORS

Art. 4. Search and Seizure Law

§ 3379. Keeping liquor for sale; evidence.

Constitutionality.—

In accord with first paragraph in original. See *State v. Langley*, 209 N. C. 178, 183 S. E. 526.

This statute is still in force in all the counties of the state, unaffected by ch. 493, Public Laws of 1935, § 3411(38) et seq., the act of 1935 not being in conflict therewith. *State v. Langley*, 209 N. C. 178, 183 S. E. 526.

It is not repealed as to New Hanover County by ch. 418, Public Laws of 1935. *State v. Tate*, 210 N. C. 168, 185 S. E. 665.

The general prohibition law of the State was not repealed by ch. 493, Public Laws of 1935, § 3411(38) et seq., as to counties not named in the latter act, its provisions applying by express provision only to the counties therein named, and it is unlawful to possess intoxicating liquor for the purpose of sale in any counties of the State not named in the act of 1935. *State v. Jones*, 209 N. C. 49, 182 S. E. 699.

Possession of More than Gallon Is Prima Facie Evidence of Possession for Purpose of Sale.—The possession of more than one gallon of intoxicating liquor is prima facie evidence of possession for the purpose of sale under this section, and is sufficient to take the case to the jury on the issue. *State v. Tate*, 210 N. C. 168, 185 S. E. 665.

But evidence establishing defendant's possession of more than a gallon of intoxicating liquor, without other incriminating evidence, is insufficient to support a directed verdict of guilty of possession of intoxicating liquor for the pur-

pose of sale under this section. *State v. Ellis*, 210 N. C. 166, 185 S. E. 663.

Sufficient Evidence to Submit Question of Possession to Jury.—Evidence that officers found a funnel, a number of containers, and glasses smelling of whiskey, in different places on defendant's premises, is held sufficient to be submitted to the jury in a prosecution on a charge of having possession of intoxicating liquor for the purpose of sale, although the amount of whiskey discovered was insufficient to invoke the presumption under the subdivision (2) of this section. *State v. Rhodes*, 210 N. C. 473, 187 S. E. 553.

Allegation That Whiskey Did Not Contain A. B. C. Stamp Regarded as Surplusage.—In an indictment sufficiently charging possession of liquor for the purpose of sale under this section an additional allegation that the whiskey did not bear the stamp of the A. B. C. Board of the county is an allegation of a nonessential fact, and will be regarded as surplusage. *State v. Atkinson*, 210 N. C. 661, 188 S. E. 73.

§ 3380. Search and seizure upon complaint and warrant.

For article discussing limits to search and seizure, see 15 N. C. Law Rev., No. 3, p. 229. See also, 15 N. C. Law Rev., No. 2, p. 101.

Art. 6. Seizure and Forfeiture of Property

§ 3398. Duty of sheriff to seize distilleries.

For article discussing the limits to search and seizure, see 15 N. C. Law Rev., No. 3, p. 229.

§ 3401. Fee for seizure.

Editor's Note.—Public Laws 1937, c. 442, provides that the provisions of this section shall not apply to Anson county.

Art. 8. National Liquor Law, Conformation of State Law

§ 3411(a). Definitions.

When Provisions Do Not Apply.—If a majority of the qualified voters of the counties named in § 3411(38) vote in favor of the sale of intoxicating liquors, then the provisions of this and the following sections, known as the Turlington Act, shall not apply to such counties. *State v. Langley*, 209 N. C. 178, 182, 183 S. E. 526.

Cited in *Hill v. Board of County Com'rs*, 209 N. C. 4, 182 S. E. 709; *Sprunt v. Hewlett*, 208 N. C. 695, 182 S. E. 655; *Inscow v. Boone*, 208 N. C. 698, 182 S. E. 926; *State v. Ellis*, 210 N. C. 166, 185 S. E. 663.

§ 3411(f). Seizure of liquor or conveyance; arrests; sale of property.

For article discussing the limits to search and seizure, see 15 N. C. Law Rev., No. 3, p. 229.

Meaning of "Absolute Personal Knowledge."—Under this section an officer "discovers any person in the act" and has "absolute personal knowledge" (1) when he sees the liquor; (2) when he has absolute personal knowledge . . . acquired through the senses of seeing, hearing, smelling, tasting or touching. 15 N. C. Law Rev., No. 2, p. 131, citing *State v. Godette*, 188 N. C. 497, 125 S. E. 24.

§ 3411(j). Possession prima facie evidence of keeping for sale.

Provisions Repealed in New Hanover County.—The provisions of this section, making the possession of intoxicating liquor lawful in certain instances, is repealed in New Hanover County by ch. 418, Public Laws of 1935. *State v. Tate*, 210 N. C. 168, 185 S. E. 665.

Section Limited to Private Dwelling Used Exclusively as a Dwelling.—The provision of this section that a person may legally possess intoxicating liquor in his dwelling for his personal consumption is limited by its terms to a private dwelling occupied and used exclusively as a dwelling, and a person may not lawfully possess intoxicating liquor in a building or structure used and operated by such person as a filling station and dwelling combined when the parts of the structure used for the respective purposes are connected. *State v. Hardy*, 209 N. C. 83, 182 S. E. 831.

§ 3411(x). Rewards for seizure of still.

Editor's Note.—Public Laws 1937, c. 442, provides that the provisions of this section shall not apply to Anson county.

Art. 9. Legalization of Sale of Beverage with Not More than 3.2% Alcoholic Content

§§ 3411(dd)-3411(mm): Repealed, so far as in

conflict, by Public Laws 1937, c. 127, s. 527, codified as § 3411(119).

Art. 10. Beverage Control Act of 1933

§ 3411(13). County license to sell at retail.

Editor's Note.—For act applicable only to Poplar Branch township in Currituck county, see Public Laws 1937, c. 390.

Art. 11. Manufacture and Sale of Light Domestic Wines

§ 3411(30). Growers of crops may make, sell and transport wines; sale in original packages; wines not manufactured in state.—

Provided, however, that any person, firm or corporation licensed in North Carolina to sell wines under this law shall have authority to import and sell wines not manufactured within the state, and which are not otherwise prohibited to be sold under the laws of the United States. (1935, c. 393, s. 2; 1937, c. 325.)

Editor's Note.—The 1937 amendment directed that the above proviso be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

Art. 12. Advertising of Alcoholic Beverages

§ 3411(37)a. Advertising of intoxicating liquors prohibited.—It shall be unlawful for any person, firm, or corporation to display, or permit to be displayed, upon any billboard, sign-board, or any other similar advertising medium, any advertisement of any alcoholic beverages or any spirituous liquors as defined in chapter forty-nine of the Public Laws of one thousand nine hundred thirty-seven [§ 3411(65) et seq.], or any acts amendatory thereof, in North Carolina. Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned, in the discretion of the court. (1937, c. 398.)

See § 3411(81).

Art. 13. Exemption of Certain Counties from Provisions of Article 8

§§ 3411(38)-3411(64): Repealed, except as referred to, by Public Laws 1937, c. 49, s. 27, codified as § 3411(91).

Editor's Note.—For act exempting town of Windsor in Bertie county from Turlington Act, see Public Laws 1937, c. 310.

For act constituting county commissioners of Halifax County the board of alcoholic control of said county, see Public Laws 1937, c. 302.

For temporary act providing salary for chairman of board of Franklin county, see Public Laws 1937, c. 250, s. 1.

The following cases, arising under the former law are placed here for the convenience of the practitioner.

General Prohibition Law Not Repealed as to Counties Not Named.—The general prohibition law of the state was not repealed by this and the following sections as to counties not named. It is unlawful to possess intoxicating liquor for the purpose of sale in any counties of the state not named. *State v. Jones*, 209 N. C. 49, 182 S. E. 699.

The contention that former section 3411(49) repealed all the laws of this State making it unlawful for any person to have intoxicating liquor in his possession for the purpose of sale, not only as to the counties named in the act, but also as to all other counties in this State, manifestly could not be sustained. *State v. Jones*, 209 N. C. 49, 182 S. E. 699.

Section 3379 Not Repealed, Amended or Modified.—There is no provision in this and the following sections expressly or by implication repealing, amending, or modifying section 3379, which is not a part of or included within the provisions of the Turlington Act, section 3411(a) et seq. *State v. Langley*, 209 N. C. 178, 182, 183 S. E. 526.

Injunction to Restrain Election under Chapter Denied.—Plaintiffs sought to enjoin the holding of an election under

this section and the following sections, contending that the statute under which the proposed election was to be held was unconstitutional. Held: Plaintiffs were not entitled to the injunctive relief sought, since if taxes should be levied to meet the expense of putting the statute into operation, plaintiffs have an adequate remedy at law, and since plaintiffs have an adequate remedy against alleged unconstitutional discriminations of the statute by violating the statute and pleading its unconstitutionality as a defense, and plaintiffs not being entitled to injunctive relief in the absence of a showing of direct injury or an invasion of their property rights resulting in irreparable injury. *Newman v. Watkins*, 208 N. C. 675, 182 S. E. 453, followed in *Inscow v. Boone*, 208 N. C. 698, 182 S. E. 926; *Hill v. Board of County Com'rs*, 209 N. C. 4, 182 S. E. 709.

Cited in *Sprunt v. Hewlett*, 208 N. C. 695, 182 S. E. 655; *Lucas v. Midgett*, 208 N. C. 699, 182 S. E. 328; 13 N. C. Law Rev., No. 4, p. 389.

Art. 14. Manufacture, Sale and Control of Alcoholic Beverages

§ 3411(65). **Purposes of article.**—The purpose and intent of this article is to establish a system of control of the sale of certain alcoholic beverages in North Carolina, and to provide the administrative features of the same, in such a manner as to insure, as far as possible, the proper administration of the sale of certain alcoholic beverages under a uniform system throughout the state. (1937, c. 49, s. 1.)

§ 3411(66). **State board of alcoholic control created; membership; compensation.**—A state board of alcoholic control is hereby created, to consist of a chairman and two associate members. The members of said board shall be men well known for their character and ability and business acumen and success. The chairman of said board shall devote his whole time to his official duties and shall receive a salary of six thousand (\$6,000.00) dollars per annum, payable monthly, together with necessary traveling expenses, to be limited, however, in the same manner as limitations for the expenses of associate members as hereinafter set forth, and the two associate members of said board shall receive for the time actually engaged in their official duties, twenty-five (\$25.00) dollars per day, with travel expense, as follows: When their private automobiles are used they shall be paid therefor, at the rate of five cents per mile traveled from their homes, to and from the place of meeting, or elsewhere, on official business, and if railroad or bus travel is used, then the actual amount thereof, and their per diem and travel expense as herein allowed, shall be paid to them monthly upon the certificate and approval of the chairman of said commission. All sums authorized to be paid under the provisions of this section are hereby appropriated and shall be paid by the state treasurer out of any fund of the state of North Carolina not otherwise appropriated, after being duly audited and approved by said state auditor. (1937, c. 49, s. 2, c. 411.)

§ 3411(67). **Members of board appointed by governor; terms of office.**—The members of said state board shall be appointed by the governor, and the first appointees shall serve as follows:

The chairman shall serve for a period of three years from the date of his appointment and one associate member shall serve for a period of two years from the date of his appointment and the other associate member shall serve for a period of one year from the date of his appointment, and

the subsequent appointments of all of the members of the said board shall be for a term of three years from the date of each appointment. (1937, c. 49, s. 3.)

§ 3411(68). **Powers and authority of board.**—Said state board of alcoholic control shall have power and authority as follows, to wit:

(a) To see that all the laws relating to the sale and control of alcoholic beverages are observed and performed.

(b) To audit and examine the accounts, records, books and papers relating to the operation of county stores herein provided for, or to have the same audited.

(c) To approve or disapprove the prices at which the several county stores may sell alcoholic beverages and it shall be the duty of said board to require the store or stores in the several counties coming under the provisions of this article to fix and maintain uniform prices and to require sales to be made at such prices as shall promote temperate use of such beverages and as may facilitate policing.

(d) To remove any member, or members, of county boards whenever in the opinion of the state board, such member, or members, of the county board, or boards, may be unfit to serve thereon.

(e) To test any and all alcoholic beverages which may be sold, or proposed to be sold to the county stores, and to install and operate such apparatus, laboratories, or other means or instrumentalities, and employ to operate the same such experts, technicians, employees and laborers, as may be necessary to operate the same, in accordance with the opinion of the said board, or may, if they deem advisable, cause such tests to be made otherwise. In lieu of establishing and operating laboratories as above directed, the board may, with the approval of the governor and the commissioner of agriculture, arrange with the state chemist to furnish such information and advice, and to perform such analyses and other laboratory services as the board may consider necessary.

(f) To supervise purchasing by the county boards when said state board is of the opinion that it is advisable for it to exercise such power in order to carry into effect the purpose and intent of this article, with full power to disapprove any such purchase and at all times shall have the right to inspect all invoices, papers, books and records in the county stores or boards relating to purchases.

(g) To exercise the power to approve or disapprove in its discretion all regulations adopted by the several county stores for the operation of said stores and the enforcement of alcoholic beverage control laws which may be in violation of the terms or spirit of this article.

(h) To require that a sufficient amount shall be so allocated as to insure adequate enforcement and the amount shall, in no instance, be less than five per cent, nor more than ten per cent of the net profits arising from the sale of alcoholic beverages.

(i) To remove in case of violation of the terms or spirit of this article, officers employed, elected or appointed in the several counties where county stores may be operated.

(j) To approve or disapprove, in its discretion, the opening of county stores, except each county that may be entitled to operate stores for the sale of alcoholic beverages shall be entitled to operate at least one store for such purpose, at the county seat therein, or at such other place as may be selected by the said county board, provided that in the location of control stores in any county in which a majority of the votes have been cast for liquor control stores due consideration shall be given to communities or towns in which a majority of the votes were cast against control, but nothing herein contained shall be construed so as to abridge any of the provisions elsewhere contained relative to the opening, closing or locating such stores. As to all additional stores in each of said counties the same shall not be opened until and unless the opening of the same and the place of location thereof shall first be approved by the said state board, which at any time may withdraw its approval of the operation of any additional county store when the said store is not operated efficiently and in accordance with the alcoholic beverage control laws and all valid regulations prescribed therefor, or whenever, in the opinion of the said state board, the operation of any county store shall be inimical to the morals or welfare of the community in which it is operated or for such other cause, or causes, as may appear to said state board sufficient to warrant the closing of any county store.

(k) To require the use of a uniform accounting system in the operation of all county stores hereunder and to provide in said system for the keeping therein and the record of all such information as may, in the opinion of the said state board, be necessary or useful in its auditing of the affairs of the said county stores, as well as in the study of such problems and subjects as may be studied by said state board in the performance of its duties.

(l) To grant, to refuse to grant, or to revoke, permits for any person, firm or corporation to do business in North Carolina in selling alcoholic beverages to or for the use of any county store and to provide and to require that such information be furnished by such person, firm or corporation as a condition precedent to the granting of such permit, or permits, and to require the furnishing of such data and information as it may desire during the life of such permit, or permits, and for the purpose of determining whether such permit, or permits, shall be continued, revoked or re-granted after expiration dates. No permit, however, shall be granted by said state board, to any person, firm or corporation when the said state board has reason sufficient unto itself to believe that such person, firm or corporation has furnished to it any false or inaccurate information or is not fully, frankly and honestly cooperating with the said state board and the several county boards in the observance and performance of all alcoholic beverage laws which may now or hereafter be in force in this state, or whenever the said board shall be of opinion that such permit ought not to be granted or continued for any cause.

(m) The said state board shall have all other powers which may be reasonably implied from the granting of express powers herein named, to-

gether with such other powers as may be incidental to, or convenient for, the carrying out and performance of the powers and duties herein given to said board.

(n) To permit the establishment of warehouses for the storage of alcoholic beverages within the state, the storage of alcoholic beverages in warehouses already established, and to prescribe rules and regulations for the storage of such beverages and the withdrawal of the same therefrom. Such warehousing or bailment of alcoholic beverages as may be made hereunder shall be for the convenience of delivery to alcoholic boards of control authorized to purchase the same and shall be under the strict supervision and subject to all of the rules and regulations of the state board of control relating thereto. (1937, c. 49, s. 4, cc. 237, 411.)

Editor's Note.—This section would seem to authorize the making of necessary rules and regulations to carry out the provisions of the act. 15 N. C. Law Rev., No. 4, p. 323.

Under this section the state board is given power to grant, deny or revoke permits for the sale of alcoholic beverages to county liquor stores. This seems to be a very flexible provision to secure an honest co-operation by those who sell alcoholic beverages with the state board and the several county boards. There are no provisions for notice or hearing or appeal and it is likely that no such provisions are needed in view of the fact that state agencies are engaged in the purchase of goods and may do so on their own terms. 15 N. C. Law Rev., No. 4, p. 328.

§ 3411(69). Removal of member by governor; vacancy appointments.—The governor shall at all times have full power and authority to remove any and all members of the said state board, upon notice to such member or members, in his discretion, for any cause that appears to him to be sufficient, and to reappoint his successor or successors to the removed members, observing, however, the terms of office of each of them, as herein set forth, and whenever a vacancy shall occur for any cause then the appointment to fill such vacancy shall be for the unexpired portion of the term of the predecessor of each appointee. (1937, c. 49, s. 5.)

§ 3411(70). County boards of alcoholic control.—In each county which may be hereafter permitted to engage in the sale of alcoholic beverages, there is hereby created a county board of alcoholic control, to consist of a chairman and two other members. The members of said board shall be well known for their character, ability and business acumen. The members of said board shall be selected in each respective county in a joint meeting of the board of county commissioners, the county board of health and the county board of education, and each member present shall have only one vote, notwithstanding the fact that there may be instances in which some members are members of another board.

The terms of office of the members of said county boards shall be as follows: The chairman, who shall be so designated by the appointing boards, shall serve for his first term a period of three years and one member shall serve for his first term a period of two years and the other member shall serve for a period of one year, all terms beginning with the date of their appointment and after the said term shall have expired their successors in office shall serve for a period of three years and shall be appointed in the same manner as herein provided in this section.

In those counties, however, in which boards of control have been appointed under the provisions of chapters four hundred eighteen and four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five [§ 3411(38) et seq.], respectively, the respective boards of control so appointed shall constitute the board of control of the county for the full term, and at the expiration of such term their successors shall be appointed in the manner herein provided for the appointment of members of county boards of control.

The terms of the members of the said respective boards of control heretofore appointed shall expire on June thirtieth, one thousand nine hundred thirty-nine, at which time new boards shall be selected in the same manner and for the same terms as set forth in this section.

Any member of any of the county boards herein above referred to in this section may be removed at any time by such composite board consisting of the board of county commissioners, the board of education and the board of health, whenever such composite board may find by a majority vote of its entire membership such member or members unfit to serve thereon, each member having only one vote as above provided for the selection of such members of county boards. In the event any member of the county board shall be removed hereunder, his successor shall be selected to serve out the time for which such member was originally selected.

From and after the ratification of this article, the said county boards of control so appointed under chapters four hundred eighteen and four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five shall operate liquor stores now being operated under the terms, provisions, restrictions, regulations and requirements of this article; Provided, that the board of control for Wilson county under chapter four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five is authorized and empowered to operate the liquor stores at Southern Pines and at Pinehurst in Moore county under the provisions of said chapter four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five for thirty days after the ratification of this article; and thereafter the county board of alcoholic control created by the terms of this article and elected for the county of Moore shall likewise be authorized and empowered after said thirty days from the ratification of this article, to operate said liquor stores at Southern Pines and at Pinehurst in Moore county under the terms, provisions, restrictions, regulations and requirements of this article. Upon the establishment and operation of said liquor stores at Southern Pines and at Pinehurst, the said county board of alcoholic control of Moore county is authorized and empowered to purchase, receive or exchange from the said Wilson county board and the said Wilson county board is authorized and empowered to sell, exchange and deliver to said Moore county board, at Southern Pines or at Pinehurst, any of the liquors or alcoholic beverages owned by said Wilson county board, for such prices and upon such terms of sale and purchase and subject to such conditions as may be mutually agreed upon by said two boards.

Upon the death or resignation of the chairman or any other member of the county board of alcoholic control, whether selected under the provisions of this article or under the provisions of chapter four hundred and eighteen or chapter four hundred and ninety-three of the Public Laws of one thousand nine hundred and thirty-five, following the expiration of the term of office for which said chairman or member has been appointed, elected or selected, his successor to fill out such unexpired term shall be selected at a joint meeting of the board of county commissioners, the county board of health and the county board of education, which joint meeting shall be held within ten (10) days after such resignation or death, which meeting shall be called by the chairman or some other member of the county board of alcoholic control, by giving notice to each member of the time and place of holding such meeting. (1937, c. 49, s. 6, cc. 411, 431.)

Editor's Note.—For act constituting county commissioners of Halifax county, the county board of alcoholic control of said county, see Public Laws 1937, c. 302.

For alcoholic beverage control act applicable to Windsor in Bertie county, see Public Laws 1937, c. 310.

§ 3411(71). Compensation for members of county boards.—The salaries of the members of the said county board shall be fixed by the joint meeting of the several boards that appoint them and shall be fixed with the view to securing the very best members available, with due regard to the fact that such salaries shall be adequate compensation, but shall not be large enough to make said positions unduly attractive or the objects of political aspirations. (1937, c. 49, s. 7.)

Editor's Note.—For temporary act providing salary for chairman of board of Franklin county, see Public Laws 1937, c. 250, s. 1.

§ 3411(72). Persons disqualified for membership on boards.—No person shall be appointed a member of either the state board or of any county board or employed thereby who shall be a stockholder in any brewery or the owner of any interest therein in any manner whatsoever, or interested therein directly or indirectly, or who is likewise interested in any distillery or other enterprise that produces, mixes, bottles or sells alcoholic beverages, or who is related to any person likewise interested or associated in business with any person likewise interested and neither of said boards shall employ any person who is interested in, directly or indirectly, or related to, any person interested in any firm, person or corporation permitted to sell alcoholic beverages in this state. (1937, c. 49, s. 8, c. 411.)

§ 3411(73). Bonds required of members of county boards.—The several members of the county board shall give bond for the faithful performance of their duties, in the penal sum of five thousand (\$5,000.00) dollars, and the said bond shall be payable to the state of North Carolina and to the county in which said board performs its duties, with some corporate surety, which surety shall be satisfactory to, and approved by, the county attorney of said county, and the chairman of the state board, and shall be deposited with the chairman of the state board. The state board for and on behalf of the state of North Carolina, and the county named in said bond, shall each be secured therein to the full amount of the

penalty thereof and the recovery or payment of any sums due thereunder to either shall not diminish or affect the right of the other obligee in said bond to recover the full amount of the said penalties thereof, and the giving and the approval of such bond shall be a part of the qualification of said members and no member shall be entitled to exercise any of the functions or powers incident to his appointment until and unless the said bond shall have been given and approved as herein provided. (1937, c. 49, s. 9.)

§ 3411(74). Powers and duties of county boards.

—The said county boards shall each have the following powers and duties:

(a) Control and jurisdiction over the importation, sale and distribution of alcoholic beverages within its respective county.

(b) Power to buy and to have in its possession and to sell alcoholic beverages within its county.

(c) Power and authority to adopt rules and regulations governing the operation of stores within its county and relating to the carrying out of the provisions and purposes of this article.

(d) To prescribe and regulate and direct the duties and services of all employees of said county board.

(e) To fix the hours for the opening and closing of stores operated by it. No store, however, shall be permitted to remain open between the hours of nine o'clock p. m. and nine o'clock a. m.

(f) To require any county stores to close on such days as it may designate, but all stores in any county operating under the provisions of this article shall remain closed on Sundays, election days, New Year's Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving and Christmas Day.

(g) To import, transport, receive, purchase, sell and deliver and have in its possession for sale for present and future delivery alcoholic beverages.

(h) To purchase or lease property, furnish and equip buildings, rooms and accommodations as and when required for the storage and sale of alcoholic beverages and for distribution to all county stores within said county.

(i) To borrow money, guarantee the payment thereof and the interest thereon, in such manner as may be required or permitted by law, and to issue, sign, endorse and accept checks, promissory notes, bills of exchange and other negotiable instruments and to do all such other and necessary things as may be required or may be convenient in the conduct of liquor stores in its county.

(j) To investigate and aid in the prosecution of violations of this article and other liquor laws, by whatever name called, and to seize alcoholic beverages in said county sold, kept, imported or transported illegally and to apply for confiscation thereof and to cooperate in the prosecution of offenders in any court in said county.

(k) To regulate and to prescribe rules and regulations that may be necessary or feasible for the obtaining of purity in all alcoholic beverages, including true statements of contents and the proper labeling thereof.

(l) To fix and maintain the prices of all alcoholic beverages sold by liquor stores in said

county and to prescribe to whom the same may be sold.

The provisions of this article shall not apply to ethyl alcohol intended for use and/or used for the following purposes:

For scientific, chemical, mechanical, industrial, medicinal and culinary purposes.

For use by those authorized to procure the same tax free, as provided by the act of congress and regulations promulgated thereunder.

In the manufacture of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder.

In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical, and industrial preparations or products unfit for beverage purposes.

In the manufacture of flavoring extracts and syrups unfit for beverage purposes.

(m) To exercise the power to buy, purchase and sell and to fix the prices at which all alcoholic beverages may be purchased from it, but nothing herein contained shall give said board the power to purchase or sell or deal in alcoholic beverages which contain less than five per centum of alcohol by weight.

(n) To locate stores in its county and to provide for the management thereof and to appoint and employ at least one person for each store conducted by it, who shall be known as "manager" thereof. The duty of such manager shall be to conduct the said store under directions of the county board and to carry out the law applying thereto, and such manager shall give bond for the faithful performance of his duties in such sum as may be fixed by said county board, with sufficient corporate surety and said surety, or sureties thereon, shall be approved by the said county board as a part of the qualifications of such manager for his appointment, and the said county board shall have the right to sue on said bond and to recover for all failures on the part of said manager faithfully to perform his duties as such manager, to the extent of any loss occasioned by such manager on his part, but as against the surety, or sureties, thereon, such aggregate recovery, or recoveries, shall not exceed the penalty of said bond.

(o) To expend for law enforcement a sum not less than five per cent nor more than ten per cent of the total profits to be determined by quarterly audits and in the expenditure of said funds shall employ one or more persons to be appointed by and directly responsible to the respective county boards. The persons so appointed shall, after taking the oath prescribed by law for the peace officers, have the same powers and authorities within their respective counties as other peace officers.

(p) To discontinue the operation of any store in its county whenever it shall appear to said board that the operation thereof is not sufficiently profitable to justify a continuance of its operation, or when, in its opinion, the operation of any store inimical or hurtful to the morals or welfare of the community in which it is operated, or when said county board may be directed to close any store by the state board; provided, that the liquor stores at Southern Pines and at Pinehurst in

Moore county, shall be continued under the provisions of this article, but no other stores shall be established or operated in Moore county unless and until an election may be had in said county under the provisions of this article and a majority of the votes cast at such election shall have been "for county liquor control stores." An election in Moore county upon the question of the establishment or operation of liquor stores under the provisions of this article may be called only after three years from the ratification of this article.

All the powers and duties herein conferred upon county boards, or required of them, shall be subject to the powers herein conferred upon the state board and whenever or wherever herein the state board has been given power to approve or disapprove anything in respect to county stores or county boards, then no power on the part of the county boards and no act of any county board shall be exercisable or valid until and unless the same has been approved by the state board. (1937, c. 49, s. 10, cc. 411, 431.)

§ 3411(75). No sales except during hours fixed by county boards; sales to minors, habitual drunkards, etc.; discretion of managers and employees; list of persons convicted of drunkenness, etc.; unlawful to buy for person prohibited.—No alcoholic beverage shall be sold knowingly by any county store or the manager thereof or any employee therein at any time other than within the opening and closing hours for said store, as fixed in the manner herein provided, and otherwise as prescribed by the said county board. No alcoholic beverage shall be sold knowingly to any minor, or to any person who has been convicted of public drunkenness or of driving any motor vehicle while under the influence of intoxicating liquors, or has been convicted of any crime wherein the court or judge shall find as a fact that such person committed said crime or aided and abetted in the commission thereof as a result of the influence of intoxicating liquors (within one year of any such conviction), or to any person known to be an habitual drunkard or who has within one year been confined in the inebriate ward of any state institution. The manager and employees of and in any county store may, in their discretion, refuse to sell alcoholic beverage to any individual applicant, and such power and the duty to exercise the same shall vest in and apply to such manager and employees, regardless of the failure of the county boards to make any regulations providing for the same, and in their discretion may refuse to sell more than four quarts at any one time in any one day to any person.

The various clerks of the superior court and of any inferior courts in counties coming under the provisions of this article shall furnish to the chairman of the control board of their county a list of all persons convicted of public drunkenness or convicted of driving an automobile while intoxicated; and the state motor vehicle department shall furnish to the chairmen of all the control boards in this state a list of all persons whose driving licenses have been revoked for driving an automobile while intoxicated, or for the illegal use of whiskey.

It shall be unlawful for any person to buy any

alcoholic beverage if he be within the class prohibited from purchasing same as set out in this section, and it shall further be unlawful for any person to buy any alcoholic beverage for any person who may be prohibited from purchasing for himself under any of the provisions of this article. (1937, c. 49, s. 11, c. 411.)

§ 3411(76). Drinking upon premises prohibited; stores closed on Sundays, election days, etc.—No alcoholic beverage shall be drunk upon the premises of any county store or warehouse, or room or building occupied or used by any county board or any of its employees for the purpose of performing their duties in respect to alcoholic beverages, and such county boards, managers and employees shall not permit alcoholic beverages to be drunk upon said premises and all county stores shall be closed on Sundays and election days, and such other days as the state board may designate. (1937, c. 49, s. 12.)

§ 3411(77). Possession illegal if taxes not paid; punishment and forfeiture for violations; possession in container without proper stamp, prima facie evidence.—It shall be unlawful for any firm, person or corporation to have in his or its possession any alcoholic beverages as defined herein upon which the taxes imposed by the laws of congress of the United States or by the laws of this state, have not been paid and any person convicted of the violation of this section shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court and the alcoholic beverage shall be seized and forfeited, together with any vehicle, vessel, aeroplane or other equipment used in the transportation and to carry the said alcoholic beverages, and the procedure pointed out in section six of chapter one of the Public Laws of one thousand nine hundred twenty-three [§ 3411(f)] for the seizure, arrest, confiscation and sale of such vehicle, vessel, aeroplane or other means of transportation shall be used and the provisions of said section six of chapter one of the public Laws of one thousand nine hundred twenty-three are hereby declared to be in full force and effect in any of the counties of the state which shall operate under the provisions of this article, and the possession of such alcoholic beverages in a container which does not bear either a revenue stamp of the federal government or a stamp of any of the county boards of the state of North Carolina shall constitute prima facie evidence of the violation of this section. (1937, c. 49, s. 13.)

§ 3411(78). Transportation, not in excess of one gallon, authorized; transportation in course of delivery to stores.—It shall not be unlawful for any person to transport a quantity of alcoholic beverages not in excess of one gallon from a county in North Carolina coming under the provisions of this article to or through another county in North Carolina not coming under the provisions of this article: Provided, said alcoholic beverages are not being transported for the purposes of sale, and provided further that the cap or seal on the container or containers of said alcoholic beverages has not been opened or broken. Nothing contained in this article shall be construed to prevent the transportation through any county not coming under the provisions of

this article, of alcoholic beverages in actual course of delivery to any alcoholic beverage control board established in any county coming under the provisions of this article. (1937, c. 49, s. 14.)

§ 3411(79). Possession for sale and sales of illicit liquors; sales of liquors purchased from stores.—The possession for sale, or sales, of illicit liquors, or the sale of any liquors purchased from the county stores, is hereby prohibited and a violation of this section shall constitute a crime and shall be punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 15.)

§ 3411(80). Drinking or offering drinks on premises of stores, and public roads or streets; drunkenness, etc., at athletic contests or other public places.—It shall be unlawful for any person to drink alcoholic beverages or to offer a drink to another person, or persons, whether accepted or not, at the place where the same is purchased from the county store, or the premises thereof, or upon any premises used or occupied by county boards for the purpose of carrying out the provisions of this article, or on any public road or street, and it shall be unlawful for any person or persons to be or become intoxicated or to make any public display of any intoxicating beverages at any athletic contest or other public place in North Carolina. The violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not exceeding fifty (\$50.00) dollars or imprisoned for not more than thirty days in the discretion of the court. (1937, c. 49, s. 16, c. 411.)

§ 3411(81). Advertising alcoholic beverages prohibited.—It shall be unlawful for any county store to advertise anywhere, or by any means or method, alcoholic beverages which it has for sale and shall not advertise or post its prices, other than in the store, or stores, which it operates, and in such stores it shall only state the brands or kinds of beverages and the price of each kind and such price list shall only be posted for public view in said store.

It shall be unlawful for any person, firm or corporation to erect or set up, or permit to be set up, any sign or bill-board, or other device, containing any advertisement of alcoholic beverages as defined herein on his premises, and if the same shall be set up by any other person, then such owner or lessee of such premises shall not permit the same to remain thereon. (1937, c. 49, s. 17.)

See § 3411(37)a.

§ 3411(82). Advertising by radio broadcasts prohibited.—No firm, person or corporation in this state shall broadcast, or permit to be broadcast, any statement, speech, or any other message by whatsoever name called, over any radio broadcasting system doing business in this state, when such advertising matter tends to advertise alcoholic beverages as defined herein and the broadcast thereof originates in this state. (1937, c. 49, s. 18.)

§ 3411(83). Additional regulations as to advertising.—The several county boards by and with the consent and approval of the state board, shall have power to make such other rules and regula-

tions as will prevent and tend to prevent advertisement of alcoholic beverages otherwise than is expressly prohibited herein and to publish such rules and regulations and to take effective measures to enforce the same. (1937, c. 49, s. 19.)

§ 3411(84). Salaries and expenses paid from proceeds of sales.—All salaries and expenses incurred under the provisions of this article except those provided for in section 3411(66) shall be paid out of the proceeds of the sales of the alcoholic beverages referred to in this article. All salaries and expenses of county boards and their employees shall be paid out of the receipts for their sales as operating expenses. (1937, c. 49, s. 20.)

§ 3411(85). Net profits to be paid into general fund of the various counties.—After deducting the amount required to be expended for enforcement as herein provided and retaining sufficient and proper working capital, the amount to be determined by the board, and except as hereinbefore provided in chapters four hundred ninety-three and four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five [§ 3411(38) et seq.], the entire net profits derived from any stores shall be paid quarterly to the general fund of each respective county wherein county stores are operated. (1937, c. 49, s. 21, c. 411.)

Editor's Note.—For act applicable only to Franklin county, see Public Laws 1937, c. 250, s. 2.

Public Laws 1937, c. 269, directed that this section be amended by adding at the end the following: "The board of county commissioners of Brunswick county may in their discretion divide the net profits, derived from the operation of any stores, with the municipalities located in said county on any basis said commissioners may deem proper."

§ 3411(86). Transportation into state; and purchases, other than from stores, prohibited.—It shall be unlawful for any person, firm, or corporation, to purchase in, or to bring in this state, any alcoholic beverage from any source, except from a county store operated in accordance with this article, except a person may purchase legally outside of this state and bring into the same for his own personal use not more than one gallon of such alcoholic beverage. A violation of this section shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 22.)

§ 3411(87). Violations by member or employee of boards, cause for removal and punishable as misdemeanor.—A violation of any of the provisions of this article by any person, firm or corporation, and the violation of any provision of this article, or any regulation adopted by any county board or by the state board, by any member of the state board, or any member of any county board, or any employee of either of said boards, shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court, and in addition thereto shall constitute sufficient cause for the removal of such person from either of said boards, or from his employment under either of said boards and in addition to the powers of the state board to remove any of its employees or any member of any county board and the power of any county board to remove any of its employees from such employment, the court in which the said conviction is had shall have the power upon such conviction

and as a part of its judgment thereon to remove such person from either of said boards or from the employment of either. (1937, c. 49, s. 23.)

§ 3411(88). "Alcoholic beverages," defined.—The term "alcoholic beverages," as used in this article, is hereby defined to be and to mean alcoholic beverages of any and all kinds which shall contain more than twenty-four per centum by volume and this article is not intended to apply to or regulate the possession, sale, manufacture or transportation of beer, wines or ales containing a lower alcoholic content than above specified and whenever the term alcoholic beverage is used in this article it shall be construed as defined in this section. (1937, c. 49, s. 24, c. 411.)

§ 3411(89). County elections as to liquor control stores; application of Turlington Act; time of elections.—No county liquor store shall be established, maintained or operated in this state, in any county thereof, until and unless there shall have been held in such county an election, under the same rules and regulations which apply to elections for members of the general assembly, and at said election there shall be submitted to the qualified voters of such county the question of setting up and operating in such county a liquor store, or stores, as herein provided, and those favoring the setting up and operation of liquor stores in such county shall mark in the voting square to the left of the words, "for county liquor control stores" printed on the ballot, and those opposed to setting up and operating liquor stores in such county shall mark in the voting square to the left of the words, "against county liquor control stores," printed on the same ballot, and if a majority of the votes cast in such election shall be for county liquor stores, then a liquor store, or liquor stores, may be set up and operated in such county as herein provided, and if a majority of the votes cast at said election shall be against county liquor stores, then no liquor stores shall be set up or operated in said county under the provisions of this article.

Such election shall be called in such county by the board of elections of such county only upon the written request of the board of county commissioners therein, or upon a petition to said board of elections signed by at least fifteen per centum of the registered voters in said county that voted in the last election for governor. In calling for such special liquor election the county board of elections shall give at least twenty days public notice of same prior to the opening of the registration books, and the registration books shall remain open for the same period of time before such special liquor election as is required by law for them to remain open for a regular election. A new registration of voters for such special liquor election is not required and all qualified electors who are properly registered prior to the registration for the special election, as well as those electors who register in said special liquor election, shall be entitled to vote in said election.

If any county while operating any such control store under the provisions of chapter four hundred ninety-three or four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five [§ 3411(38) et seq.] or under the terms of this article shall hereafter under the provisions of

this article hold an election and at such election a majority of the votes shall be cast "against county liquor control stores," then the county control board in such county shall within three (3) months from the canvassing of such vote and the declaration of the result thereof, close said stores and shall thereafter cease to operate the same. During this period of time, the county control board shall dispose of all alcoholic beverages on hand, all fixtures and all other property in the hands and under the control of the county control board and convert the same into money and shall, after making a true and faithful accounting, turn all money in its hands over to the general fund of the county. Thereafter, chapter one of the Public Laws of one thousand nine hundred twenty-three [§ 3411(a) et seq.], being commonly known as the Turlington Act, shall be in full force and effect in such county, until and unless another election is held under the provisions of this article, in which a majority of the votes shall be cast "for county liquor control stores," except modified by this article or acts amendatory hereof.

No election under this section shall be held on the day of any biennial election for county officers, or within sixty days of such an election, and the date of such elections under this section shall be fixed by the board of elections of the county wherein the same is held.

No other election shall be called and held in any of the counties in the state under the provisions of this article within three years from the holding of the last election under this article. In any county in which an election was held either under the provisions of chapter four hundred ninety-three or chapter four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five, an election may be called under the provisions of this article, provided no such election shall be called within three years of the holding of the last election. (1937, c. 49, s. 25, c. 431.)

§ 3411(90). Elections in counties now operating stores, not required for continued operation; Pinehurst and Southern Pine stores transferred to Moore county board.—Nothing herein contained shall be so construed as to require counties in which liquor stores have been established under chapter four hundred eighteen or four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five [§ 3411(38) et seq.] to have any further election in order to enable such counties to establish liquor stores, and as to such counties in which liquor stores are now being operated under chapters four hundred eighteen or four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five, such stores shall from the ratification of this article be operated under the terms of this article; Provided, that in Moore county the liquor stores heretofore established and now being operated under the provisions of said chapter four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five, at Southern Pines and at Pinehurst by the Wilson county alcoholic beverage control board, created by the provisions of said chapter four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five, shall continue to be operated

for thirty days after the ratification of this article and shall thereafter be operated under the provisions of this article by the county board of alcoholic control of Moore county under the provisions of this article without requiring an election on said question to be held in Moore county under the provisions of this article. (1937, c. 49, s. 26.)

§ 3411(91). Laws repealed.—Chapters four hundred eighteen and four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five [§ 3411(38) et seq.] be and the same are hereby repealed, except as referred to in this article, and all other laws and clauses of laws in conflict herewith to the extent of such conflict are hereby repealed. (1937, c. 49, s. 27.)

Art. 15. Beverage Control Act of 1937

§ 3411(92). Title.—This article shall be known as the Beverage Control Act of one thousand nine hundred and thirty-seven. (1937, c. 127, s. 500.)

§ 3411(93). Definitions.—The term "beverages" as used in this article shall include:

(a) Beer, lager beer, ale, porter, and other brewed or fermented beverages containing one-half of one per cent (1%) of alcohol by volume, but not more than five per cent (5%) of alcohol by weight as authorized by the laws of the United States of America.

(b) Unfortified wines, as used in this article, shall mean wines of an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar and having an alcoholic content of not less than five (5%) per centum and not more than fourteen (14%) per centum of absolute alcohol, the per centum of alcohol to be reckoned by volume.

(c) Fortified wines shall mean any other wine or alcoholic beverage made by fermentation from grapes, fruits and berries and fortified by the addition of brandy or alcohol thereto, and having an alcoholic content of not less than fourteen (14%) per centum and not more than twenty-four (24%) per centum of absolute alcohol, reckoned by volume.

The term "person" used in this article shall mean any individual, firm, partnership, association, corporation, or other groups or combination acting as a unit.

The term "sale" as used in this article shall include any transfer, trade, exchange or barter in any manner or by any means whatsoever, for a consideration. (1937, c. 127, s. 501, c. 249, s. 6.)

§ 3411(94). Regulations.—The beverages enumerated in section 3411(93) may be manufactured, transported, or sold in this state in the manner and under the regulations hereinafter set out. (1937, c. 127, s. 502.)

§ 3411(95). Transportation.—The beverages enumerated in section 3411(93) may be transported into, out of or between points in this state by railroad companies, express companies or by steamboat companies engaged in public service as common carriers and having regularly established schedules of service, upon condition that such companies shall keep accurate records of the character and volume of such shipments,

the character and number of packages or containers, shall keep records open at all times for inspection by the commissioner of revenue of this state or his authorized agent, and upon condition that such common carrier shall make report of all shipments of such beverages into, out of or between points in this state at such times and in such detail and form as may be required by the commissioner of revenue.

The beverages enumerated in section 3411(93) may be transported into, out of or between points in this state over the public highways of this state by motor vehicles, upon condition that every person intending to make such use of the highways of the state shall as a prerequisite thereto register such intention with the commissioner of revenue in advance of such transportation, with notice of the kind and character of such products to be transported and the license and motor number of each motor vehicle intended to be used in such transportation. Upon the filing of such information, together with an agreement to comply with the provisions of this article, the commissioner of revenue shall without charge therefor issue a numbered certificate to such owner or operator for each motor vehicle intended to be used for such transportation, which numbered certificate shall be prominently displayed on the motor vehicle used in transporting the products named in section 3411(93). Every person transporting such products over any of the public highways of this state shall, during the entire time he is so engaged, have in his possession an invoice or bill of sale or other record evidence, showing the true name and address of the person from whom he has received such beverages, the character and contents of containers, the number of bottles, cases or gallons of such shipment, the true name and address of every person to whom deliveries are to be made. The person transporting such beverages shall, at the request of any representative of commissioner of revenue, produce and offer for inspection said invoice or bill of sale or record evidence. If said person fails to produce invoice or bill of sale or record evidence, or if, when produced, it fails to clearly and accurately disclose said information, the same shall be prima facie evidence of the violation of this article. Every person engaged in transporting such beverages over the public highways of this state shall keep accurate records of the character and volume of such shipments, the character and number of packages or containers, shall keep records open at all times for inspection by the commissioner of revenue of this state, or his authorized agent, and upon condition that such person shall make report of all shipments of such beverages into, out of, or between points in this state at such times and in such detail and form as may be required by the commissioner of revenue.

The purchase, transportation and possession of beverages enumerated in section 3411(93) by individuals for their own use is permitted without restriction or regulation. The provisions of this section as to transportation of beverages enumerated in section 3411(93) by motor vehicles over the public highways of this state shall in like manner apply to the owner or operator of any boat using the waters of this state for such transportation, and all of the provisions of this section,

with respect to permit for such transportation and reports to the commissioner of revenue by the operators of motor vehicles on public highways, shall in like manner apply to the owner or operator of any boat using the waters of this state. (1937, c. 127, s. 503.)

§ 3411(96). Manufacture. — The brewing or manufacture of beverages for sale enumerated in section 3411(93) shall be permitted in this state upon the payment of an annual license tax to the commissioner of revenue in the sum of five hundred dollars (\$500.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter. Persons licensed under this section may sell such beverages in barrels, bottles, or other closed containers only to persons licensed under the provisions of this article for resale, and no other license tax shall be levied upon the business taxed in this section. The sale of malt, hops, and other ingredients used in the manufacture of beverages for sale enumerated in section 3411(93) are hereby permitted and allowed: Provided, that any person engaged in the business of manufacturing in this state the wines described in section 3411(93) (b) shall be required to pay an annual license tax of two hundred fifty dollars (\$250.00). Nothing in this article shall be construed to impose any tax upon any resident citizen of this state who makes native wine for the use of himself, his family and guests from fruits, grapes and berries cultivated or grown wild upon his own land. (1937, c. 127, s. 504, c. 249, s. 7.)

§ 3411(97). Bottler's license.—Any person who shall engage in the business of receiving shipments of the beverages enumerated in section 3411(93) (a), in barrels or other containers, and bottling the same for sale to others for resale, shall pay an annual license tax of two hundred fifty dollars (\$250.00); and any person who shall engage in the business of bottling the beverages described in section 3411(93) (b) or (c), or both, shall pay an annual license tax of two hundred fifty dollars (\$250.00): Provided, however, that any person engaged in the business of bottling the beverages described in section 3411(93) (a) and also the beverages described in section 3411(93) (b) and (c), or either, shall pay an annual license tax of four hundred dollars (\$400.00). No other license tax shall be levied upon the businesses taxed in this section, but licensees under this section shall be liable for the payment of the taxes imposed by section 3411(109) in the manner therein set forth. (1937, c. 127, s. 505, c. 249, s. 8.)

§ 3411(98). Wholesaler's license.—License to sell at wholesale, which shall authorize licensees to sell beverages described in section 3411(93) (a) in barrels, bottles, or other containers, in quantities of not less than one case or container to a customer, shall be issued as a state-wide license by the commissioner of revenue. The annual license under this section shall be one hundred and fifty dollars (\$150.00) and shall expire on the next succeeding thirtieth day of April. The license issued under this section shall be revocable at any time by the commissioner of revenue for failure to comply with any of the conditions of this article with respect to the character

of records required to be kept, reports to be made or payment of other taxes hereinafter set out.

Licensees to sell at wholesale the beverages described in section 3411(93) (b) and (c), or either shall pay an annual license tax of one hundred fifty dollars (\$150.00): Provided, that a licensee to sell at wholesale the beverages described in section 3411(93) (a) and the beverages described in section 3411(93) (b) and (c), or either, shall pay an annual license tax of two hundred fifty dollars (\$250.00).

If any wholesaler maintains more than one place of business or storage warehouse from which orders are received or beverages are distributed a separate license shall be paid for each separate place of business or warehouse.

The owner or operator of every distributing warehouse selling, distributing or supplying to retail stores beverages enumerated in section 3411(93) shall be deemed wholesale distributors within the meaning of this article, and shall be liable for the tax imposed in this section, and shall comply with the conditions imposed in this article upon wholesale distributors of beverages with respect to payment of taxes levied in this article and bond for the payment of such taxes. (1937, c. 127, s. 506, c. 249, s. 9.)

§ 3411(99). Sales on railroad trains.—The sale of beverages enumerated in section 3411(93) shall be permitted on railroad trains in this state to be sold only in dining cars, buffet cars, Pullman cars, or club cars, and for consumption on such cars upon payment to the commissioner of revenue of one hundred dollars (\$100.00) for each railroad system over which such cars are operated in this state, for an annual state-wide license expiring on the next succeeding thirtieth day of April. No other license shall be levied upon licensees under this section, but every licensee under this section shall make a report to the commissioner of revenue on or before the tenth day of each calendar month covering sales for the previous month and payment of the tax on such sales at the rate of tax levied in this article. (1937, c. 127, s. 507.)

§ 3411(100). Salesman's license.—License for salesmen, which shall authorize the licensee to offer for sale within the state or solicit orders for the sale of within the state, beverages enumerated in this article, shall be issued by the commissioner of revenue upon the payment of an annual license tax of twelve dollars and fifty cents (\$12.50) to the commissioner of revenue, such license to expire on the next succeeding thirtieth day of April. License to salesmen shall be issued only upon the recommendation of the vendor whom they represent, and no other license tax shall be levied under this section. (1937, c. 127, s. 508.)

§ 3411(101). Character of license.—License issued under authority of section 3411(93) (a) shall be of two kinds:

(1) "On premises" license which shall be issued for bona fide restaurants, cafes, cafeterias, hotels, lunch stands, drug stores, filling stations, grocery stores, cold drink stands, tea rooms, or incorporated or chartered clubs. Such license shall authorize the licensee to sell at retail beverages for consumption on the premises designated in the license, and to sell the beverages in

original packages for consumption off the premises.

(2) "Off premises" license which shall authorize the licensee to sell at retail beverages for consumption only off the premises designated in the license, and only in the immediate container in which the beverage was received by the licensee.

In a municipality the governing board of such municipality shall determine whether an applicant for license is entitled to a "premises" license under the terms of this article, and outside of municipalities such determination shall be by the board of commissioners of the county. (1937, c. 127, s. 509.)

§ 3411(101)a. Retail license issued for sale of wines.—License issued under authority of section 3411(93) (b) and (c) shall be of two kinds:

"On premises" licenses shall be issued to bona fide hotels, cafeterias, cafes and restaurants, and shall authorize the licensees to sell at retail for consumption on the premises designated in the license: Provided, no such license shall be issued except to hotels, cafeterias, cafes and restaurants where prepared food is customarily sold, and to such only as are licensed under the provisions of section 7880(58), and which, at the time of the application for such license, have been given a grade A rating by the state department of health.

2. "Off premises" licenses shall authorize the licensee to sell said beverages at retail for consumption off the premises designated in the license, and all such sales shall be made in the immediate container in which the beverage was purchased by the licensee, and every such container shall have the tax stamp displayed thereon, as provided in section 3411(109). (1937, c. 249, s. 10.)

§ 3411(102). Amount of retail license tax.—The license tax to sell at retail under section 3411(93) (a) for municipalities shall be:

(1) For "on premises" license, fifteen dollars (\$15.00).

(2) For "off premises" license, ten dollars (\$10.00).

The license tax to sell at retail under section 3411(93) (b) or (c), or both, shall be:

(1) For "on premises" license, fifteen dollars (\$15.00).

(2) For "off premises" license, ten dollars (\$10.00).

The rate of license tax levied in this section shall be for the first license issued to one person and for each additional license issued to one person an additional tax of ten per cent (10%) of the base tax, such increase to apply progressively for each additional license issued to one person. (1937, c. 127, s. 510, c. 249, s. 11.)

§ 3411(103). Who may sell at retail.—Every person making application for license to sell at retail beverages enumerated in section 3411(93), if the place where such sale is to be made is within a municipality, shall make application first to the governing board of such municipality, and the application shall contain:

(1) Name and residence of the applicant and the length of his residence within the state of North Carolina.

(1½) That state, county, or city shall not issue license under this article to any person, firm,

or corporation who has not been a bona fide resident of North Carolina for one year.

That no resident of the state shall obtain a license under this article and employ or receive aid from a non-resident for the purpose of defeating the above section.

The penalty for violating item one and one-half shall be a misdemeanor. All persons convicted shall be imprisoned not more than thirty days, nor fined more than two hundred dollars (\$200.00).

(2) The particular place for which the license is desired, designating the same by a street and number, if practicable; if not, by such other apt description as definitely locates him.

(3) The name of the owner of the premises upon which the business licensed is to be carried on.

(4) That the applicant intends to carry on the business authorized by the license or himself or under his immediate supervision and direction.

(5) A statement that the applicant is a citizen and resident of the state of North Carolina and not less than twenty-one years of age, that such applicant is of good moral character and has never been convicted of a felony involving moral turpitude or adjudged guilty of violating the prohibition laws, either state or federal, within the last two years prior to the filing of the application. The application must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oath. If it appear from the statement of applicant or otherwise that such applicant has been convicted of a felony involving moral turpitude or adjudged guilty of violating the prohibition laws, either state or federal, within the last two years prior to the filing of the application, or within two years from the completion of sentence, such license shall not be granted, and it shall afterwards appear that any false statement is knowingly made in any part of said application and license received thereon, the license of the applicant shall be revoked and the applicant subjected to the penalty provided by law for misdemeanors. Before any such license shall be issued, the governing body of the municipality shall be satisfied that statements required by sub-sections (1), (2), (3), (4), and (5) of this section are true. (1937, c. 127, s. 511.)

§ 3411(104). County license to sell at retail.—

License to sell at retail shall be issued by the board of commissioners of the county, and application for such license shall be made in the same manner and contain the same information set out in the preceding section with respect to municipal license. If the application is for license to sell within a municipality, the application must also show that license has been granted the applicant by the governing board of such municipality. The granting of a license by the governing board of a municipality shall determine the right of an applicant to receive a county license upon compliance with the conditions of this article.

If the application is for license to sell outside of a municipality within the county, the application shall also show the distance to the nearest church or public or private school from the place at which the applicant purposes to sell at retail. No license shall be granted to sell within

three hundred feet of any public or private school buildings or church building outside of incorporated cities and towns: Provided, the restriction set forth in this sentence shall not apply to unincorporated towns and villages having police protection.

The clerk of the board of commissioners of each county shall make prompt report to the commissioner of revenue of each license granted by the board of commissioners of such county. The county license fee shall be fixed at twenty-five dollars (\$25.00) for the sale of beverages described in section 3411(93) (a), and twenty-five dollars (\$25.00) for the sale of beverages described in section 3411(93) (b) and (c), and the same shall be placed in the county treasury, for the use of the county. (1937, c. 127, s. 512, c. 249, s. 12.)

§ 3411(105). Issuance of license mandatory; sales during religious services.—It shall be mandatory that the governing body of a municipality or county issue license to any person applying for the same when such person shall have complied with the requirements of this article: Provided, no person shall dispense beverages herein authorized to be sold within fifty feet of a church building in an incorporated city or town, or in a city or town having police protection, whether incorporated or not, while religious services are being held in such church, or within three hundred feet of a church building outside the incorporate limits of a city or town while church services are in progress. (1937, c. 127, s. 513.)

§ 3411(106). Revocation of license.—If any licensee violates any of the provisions of this article or any rules and regulations under authority of this article, or fails to superintend in person or through a manager the business for which the license was issued, or allows the premises with respect to which the license was issued to be used for any unlawful, disorderly, or immoral purposes, or knowingly employs in the sale or distribution of beverages any person who has been convicted of a felony involving moral turpitude or adjudged guilty of violating the prohibition laws within two years, or otherwise fails to carry out in good faith the purposes of this article, the license of any such person may be revoked by the governing board of the municipality or by the board of county commissioners after the licensee has been given an opportunity to be heard in his defense. Whenever any person, being duly licensed under this article, shall be convicted of the violation of any of the prohibition laws on the premises herein licensed, it shall be the duty of the court to revoke said license. Whenever any license which has been issued by any municipality, any board of county commissioners, or by the commissioner of revenue has been revoked, it shall be unlawful to reissue said license for said premises to any person for a term of six months after the revocation of said license. (1937, c. 127, s. 514.)

§ 3411(107). State license.—Every person who intends to engage in the business of retail sale of the beverages enumerated in section 3411(93) (a) shall also apply for and procure a state license from the commissioner of revenue.

For the first license issued to each licensee five dollars (\$5.00), and for each additional license is-

sued to one person an additional tax of ten per cent (10%) of the five dollars base tax. That is to say, that for the second license issued the tax shall be five dollars and fifty cents (\$5.50) annually, for the third license six dollars (\$6.00) annually, and an additional fifty cents (50c) per annum for each additional license issued to such person. (1937, c. 127, s. 515.)

§ 3411(108). State license to sell wine at retail.—Every person who intends to engage in the business of selling wines as defined in section 3411(93) (b) and (c) shall procure a state license for such business, which license shall in all cases be issued under the same restrictions, rules and regulations as set out in this article for the issuance of license for the sale of beverages described in section 3411(93) (a), and for which license the following schedule of taxes is hereby levied:

(1) For "on premises" license, fifty dollars (\$50.00).

(2) For "off premises" license, five dollars (\$5.00).

Such retail license shall authorize the sale of the beverages described in this section only on the premises described in the license; and if the same person operates more than one place at which said beverages are sold at retail, he shall obtain a license for each such place and pay therefor the license tax provided in this section.

If the license issued to any person by any municipality or county to sell the beverages referred to in this article shall be revoked by the proper officers of such municipality or county, or by any court, it shall be the duty of the commissioner of revenue to revoke the state license of such licensee; and in such event the licensee shall not be entitled to a refund of any part of the license tax paid.

It shall be unlawful for any wholesale licensee to make any sale or delivery of the beverages described in section 3411(93) (b) or (c) to any person except persons who have been licensed to sell such beverages at retail, as prescribed in this article.

It shall be unlawful for any retail licensee to purchase any of the beverages described in section 3411(93) (b) or (c) from any person except wholesale licensees maintaining a place of business within this state and duly licensed under the provisions of this article. (1937, c. 127, s. 516, c. 249, s. 13.)

§ 3411(109). Additional tax.—In addition to the license taxes herein levied, a tax is hereby levied upon the sale of the beverages enumerated in section 3411(93) (a) of three dollars (\$3.00) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than twelve ounces per bottle, a tax of one cent (1c) per bottle.

In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages described in section 3411(93) (b) of ten cents (10c) per gallon, and in section 3411(93) (c) a tax of thirty cents (30c) per gallon.

The taxes levied under this section shall be paid through the use of wine revenue stamps, as hereinafter provided, by affixing stamps of proper denominations to the bottle or container in which or from which said wines are normally sold at

retail. The stamps shall be affixed by the manufacturer, winery, bottler, wholesaler or distributor in such a manner that their removal will require continued application of water or steam. The commissioner of revenue shall design, issue, sell, and distribute such stamps, of such denominations as are customary in the trade and as may be necessary, and shall require of every manufacturer, winery, bottler, wholesaler, and distributor that such stamps be purchased and affixed to each and every bottle or container of wine sold within this state. Stamps shall be sold by the commissioner at a discount of five per cent (5%) as compensation to the manufacturer, winery, bottler, wholesaler, or distributor for affixing stamps to containers. Stamps for container of more or less than one gallon shall be proportioned to the tax levied in this section upon the several classes of wine defined in section 3411(93) (b) and (c), respectively, but the stamp on any single package shall not be less than one cent (1c).

It shall be unlawful for any dealer, either wholesale or retail, to have exposed for sale or in his possession, either in storage or on display, any wines taxable under this article without having attached to each bottle or other container the proper stamp indicating the payment of the tax herein levied, and in addition to other penalties for violation of this provision it shall be lawful for the department of revenue through any of its authorized agents, to confiscate any stock on hand, on display, or in storage, of any dealer who has not complied with the provisions of this section. The taxes levied in this section are in addition to the taxes levied in Schedule E [§ 7880(156)a et seq.] of this act. (1937, c. 127, s. 517, c. 249, s. 14.)

§ 3411(110). Tax payable by wholesale distributors.—The tax levied in the preceding section shall be paid to the commissioner of revenue by the wholesale distributor or bottler of such beverages. The tax herein levied shall be paid by every wholesale distributor or bottler on or before the tenth day of each month for all beverages sold within the preceding month. As a condition precedent to the granting of license by the commissioner of revenue to any wholesale distributor or bottler of beverages under this article, the commissioner of revenue shall require each such wholesale distributor or bottler to furnish bond in an indemnity company licensed to do business under the insurance laws of this state in such sum as the commissioner of revenue shall find adequate to cover the tax liability of each such wholesale distributor or bottler, proportioned to the volume of business of each such wholesale distributor or bottler, but in no event to be less than one thousand dollars (\$1,000.00) or to deposit federal, state, county, or municipal bonds in required amounts, such county or municipal bonds to be approved by the commissioner of revenue. The commissioner of revenue may grant such extension of time for compliance with this condition as may be found to be reasonable. (1937, c. 127, s. 518.)

§ 3411(110)a. Non-resident manufacturers and wholesale dealers to be licensed.—From and after April thirtieth, one thousand nine hundred thirty-seven, every non-resident desiring to engage in the business of making sales of the beverages de-

scribed in section 3411(93) to wholesale dealers licensed under the provisions of this article, shall first apply to the commissioner of revenue for a permit so to do. The commissioner of revenue may require of every such applicant that a bond in a sum not to exceed two thousand dollars (\$2,000.00) be executed by such applicant and deposited with the commissioner, conditioned upon the faithful compliance by such applicant with the provisions of this article, and particularly that such applicant shall not make sales of any of the beverages described in section 3411(93) to any person in this state except a duly licensed wholesale dealer. Upon the payment of a license tax of one hundred fifty dollars (\$150.00), if the commissioner is satisfied that said applicant is a bona fide manufacturer or distributor of the beverages defined in section 3411(93), he shall then issue a permit to such applicant which shall bear a serial number. Every holder of such non-resident permit and license shall thereafter put the number of such permit on every invoice for any quantity of beverages sold by such licensee to any wholesale dealer in North Carolina. Upon the failure of any such licensee to comply with all the provisions of this article the commissioner of revenue may revoke such permit or license.

Any resident manufacturer licensed under section 3411(96) shall not be required to post the bond required by this section. (1937, c. 249, s. 15.)

§ 3411(111). Payment of tax by retailers.—The granting of license by any municipality or county under this article to any person to sell at retail the beverages enumerated under section 3411(93) shall not be a valid license for such sale at retail until such person shall have filed with the commissioner of revenue a bond in a surety company licensed by the insurance department to do business in this state in such sum as the commissioner of revenue may find to be sufficient to cover the tax liability of every such person, but in no event to be less than one thousand dollars (\$1,000.00). The commissioner of revenue may waive the requirement of this section for indemnity bond with respect to any such person who may file a satisfactory contract or agreement with the commissioner of revenue that such person will purchase and sell beverages enumerated in section 3411(93) only from wholesale distributors or bottlers licensed by the commissioner of revenue under this article who pay the tax under section 3411(109) upon all such beverages sold to retail dealers in this state. The violation of the terms of any such contract or agreement between any such retail dealer and the commissioner of revenue, by the purchase or sale of any of the beverages enumerated in section 3411(93) from any one other than a licensed wholesale distributor or bottler under this article shall automatically cancel the license of any such retail dealer and shall be prima facie evidence of intent to defraud, and any person guilty of violation of any such contract or agreement shall be guilty of a misdemeanor. (1937, c. 127, s. 519, c. 249, s. 16.)

§ 3411(112). Tax on spirituous liquors.—In addition to other taxes levied in this article, and in lieu of taxes levied in Schedule E of this act [§ 7880(156)a et seq.] on the sale of spirituous liquors, there is hereby levied a tax of seven (7%) per cent on the retail price of distilled liquors of

every kind that may be sold in this state, including liquors sold in county liquor stores. The taxes levied in this section shall be payable monthly, at the same time and in the same manner as taxes levied in Schedule E of this act, and the liability for such tax shall be subject to all the rules, regulations and penalties provided in Schedule E and in other sections of this act for the payment of taxes. One-fourteenth of the taxes collected under this section are intended to pay the necessary expenses of the state alcohol control board, if such board shall be set up by act of this general assembly, and for other necessary expenses in connection with the enforcement of such laws as may be enacted by this general assembly for the sale of alcoholic liquors and to meet such appropriations there is hereby appropriated and made available for the purposes above set forth one-fourteenth of the amount of taxes collected under this section, such sum to be allocated for such purpose by the director of the budget upon request of the state alcohol control board and expended and accounted for as other state funds, and the director of the budget is hereby given authority to estimate the revenues to be received under this section, to the end that a sufficient sum shall be made available for the purpose of defraying the expenses of the state alcohol control board until sufficient revenues have been collected as provided hereunder for said purposes: Provided, this section shall have no effect until and unless there is a state alcohol control board set up by the passage of an act of the present general assembly providing for county option control of liquor.

Spirituous liquors, as referred to in this section, shall be deemed to include any alcoholic beverages containing an alcoholic content of more than twenty-four per cent (24%) by volume. (1937, c. 127, s. 519½, c. 249, ss. 17, 18½.)

§ 3411(113). Books, records, reports.—Every person licensed under any of the provisions of this article shall keep accurate records of purchase and sale of all beverages taxable under this article, such records to be kept separate from all purchases and sales of merchandise taxable under this article, including a separate file and record of all invoices. The commissioner of revenue, or any authorized agent, shall at any time during business hours have access to such records. The commissioner of revenue may also require regular or special reports to be made by every such person, at such times and in such form as the commissioner may require. (1937, c. 127, s. 520.)

§ 3411(114). No license for sales upon school property.—No license shall be issued for the sale of beverages enumerated in section 3411(93) upon the campus or property of any public or private school or college in this state. (1937, c. 127, s. 521.)

§ 3411(115). License shall be posted.—Each form of license required by this article shall be kept posted in a conspicuous place at each place where the business taxable under this article is carried on, and a separate license shall be required for each place of business. (1937, c. 127, s. 522.)

§ 3411(116). Administrative provisions.—The commissioner of revenue and the authorized agents of the state department of revenue shall have and exercise all the rights, duties, powers, and responsibilities in enforcing this article that are enumerated in the act of the general assembly known as the Revenue Act in administering taxes levied in Schedule B [§ 7880(30) et seq.] of said Act. (1937, c. 127, s. 523.)

§ 3411(117). Appropriation for administration.—For the efficient administration of this article an appropriation is hereby made for the use of the department of revenue in addition to the appropriation in the Appropriation Bill of a sum equal to three per cent (3%) of the total revenue collections under this article to be expended under allotments made by the budget bureau of such part of the whole of such appropriation as may be found necessary for the administration of this article. The budget bureau may estimate the yield of revenue under this article and make advance apportionment based upon such estimate, and to provide for the necessary expense of providing materials, supplies, and other expenses needful to be incurred prior to the beginning of the next fiscal year, July first, one thousand nine hundred thirty-seven, the budget bureau may make such advance allotment from such estimate of revenue yield as it may find proper for the convenient and efficient administration of this article. (1937, c. 127, s. 524.)

§ 3411(118). Violation made misdemeanor; revocation of permits; forfeiture of license.—Whosoever violates any of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court. If any licensee is convicted of the violation of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, the court shall immediately declare his permit revoked, and notify the county commissioners accordingly, and no permit shall thereafter be granted to him within a period of three years thereafter. Any licensee who shall sell or permit the sale on his premises or in connection with his business, or otherwise, of any alcoholic beverages not authorized under the terms of this article, unless otherwise permitted by law, shall, upon conviction thereof, forfeit his license in addition to any punishment imposed by law for such offense. (1937, c. 127, s. 525.)

§ 3411(119). Conflicting laws repealed.—All laws and clauses of laws in conflict with this article, and including the provisions of Senate Bill three hundred sixty-seven, ratified on the fifth day of April, one thousand nine hundred thirty-three [§§ 3411(dd)-3411(mm)], if any such are in conflict, are hereby repealed. (1937, c. 127, s. 527.)

§ 3411(120). Effective date.—All taxes levied in this article shall be in effect from and after April thirtieth, one thousand nine hundred thirty-seven. (1937, c. 127, s. 528.)

Art. 16. Manufacture, etc., of Wines

§ 3411(121). Manufacture, sale, transportation and importation of wines legalized; adoption of

federal regulations.—The manufacture, sale, transportation and importation in North Carolina of wines as defined in and licensed to be sold by sub-sections (b) and (c) of section 3411(93), and all acts supplementary thereof, are hereby in all respects legalized subject to the terms, conditions and regulations as set forth in sections 3411(92)-3411(120), and all acts supplementary to and amendatory thereof. The "Standards of Identity for Wine" and the regulations relating to "Labeling and Advertising of Wine" promulgated by the Federal Alcohol Administration of the United States Treasury Department, and known respectively as Regulation Number Four, Article II, and Regulation Number Four, Articles III and VI, are hereby adopted by North Carolina, and incorporated and made a part of this section. (1937, c. 335.)

CHAPTER 67

RAILROADS AND OTHER CARRIERS

Art. 5. Powers and Liabilities

§ 3449. Obstructing highways; defective crossings; failure to repair after notice misdemeanor.

Cited in *Cashatt v. Brown*, 211 N. C. 367, 190 S. E. 480.

Art. 9. Railroad Police

§ 3483. Railway conductors and station agents declared special police.

For article discussing arrest without a warrant, see 15 N. C. Law Rev., No. 2, p. 101.

Art. 13. Pipe Line Companies

§ 3542(d). Right of eminent domain conferred upon pipe line companies; other rights.—Any pipe line company transporting or conveying natural gas, gasoline, crude oil, or other fluid substances by pipe line for the public for compensation, and incorporated under the laws of the state of North Carolina, may exercise the right of eminent domain under the provisions of chapter thirty-three of the Consolidated Statutes of North Carolina and acts amendatory thereof (§ 1705 et seq.), and for the purpose of constructing and maintaining its pipe lines and other works shall have all the rights and powers given railroads and other corporations by chapters thirty-two and sixty-seven of the Consolidated Statutes of North Carolina of one thousand nine hundred and nineteen and acts amendatory thereof (§§ 1695 et seq. and 3412 et seq.), provided the pipe lines of such companies transporting or conveying natural gas, gasoline, crude oil, or other fluid substances shall originate within this state. Nothing herein shall prohibit any such pipe line company granted the right of eminent domain under the laws of this state from extending its pipe lines from within this state into another state for the purpose of transporting natural gas into this state, nor to prohibit any such pipe line company from conveying or transporting natural gas, gasoline, crude oil, or other fluid substances from within this state into another state. All such pipe lines companies shall be deemed public service companies and shall be subject to the laws of this state regulating such corporations. (1937, c. 280.)

Editor's Note.—Both chapters 108 and 280 of the Public Laws 1937, apply only to pipe lines originating in North Carolina. Chapter 108 amends § 1706. The legislature foresaw a possible holding invalidating the restriction of the

act to pipe lines "originating in North Carolina," and specified in chapter 108 that such a holding should not invalidate the provision or clause containing the words, but merely remove the restriction. No such provision was made in chapter 280. These two chapters, neither referring to the other, covering the same subject in diverse fashion, introduce needless complexity into the law, and illustrate again the need for a more effective agency to draft and coordinate legislation. 15 N. C. Law Rev., No. 4, p. 364.

CHAPTER 68

REGISTER OF DEEDS

Art. 1. The Office

§ 3543(1). Four-year term for registers of deeds; counties excepted. — At the general election for the year one thousand nine hundred and thirty-six and quadrennially thereafter there shall be elected in each county of this state by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alleghany, Alexander, Ashe, Avery, Beaufort, Bladen, Clay, Davidson, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Macon, Mitchell, Orange, Rowan, Swain, Transylvania, Vance, Washington, Yadkin, Cherokee, Dare, Lincoln, and Moore counties. (1935, cc. 362, 392, 462; 1937, c. 271.)

Editor's Note.—The 1937 amendment struck out Stanly from the list of counties excepted from the operation of this section.

§ 3545. Bond required.

What Amounts to Breach of Bond.—Failure of the register of deeds to register written instruments properly presented or failure to properly index and cross-index them is a breach of the bond required by this section. *Bank of Spruce Pine v. McKinney*, 209 N. C. 668, 184 S. E. 506.

Art. 2. The Duties

§ 3553. Registration of instruments.

Indexing and Cross-Indexing Is Essential to Proper Registration.—The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by this section, is essential to their proper registration. *Bank of Spruce Pine v. McKinney*, 209 N. C. 668, 672, 184 S. E. 506.

§ 3555. Liability for failure to register.

Failure to Properly Index and Cross-Index Is a Breach of Bond.—The failure of the register of deeds to register instruments properly presented or his failure to properly index and cross-index them is a breach of his statutory bond, § 3545, for which he and the surety on his bond are liable to the person injured by such breach under this section. *Bank of Spruce Pine v. McKinney*, 209 N. C. 668, 184 S. E. 506.

CHAPTER 70

ROADS AND HIGHWAYS

Art. 9. Construction and Maintenance of Roads and Bridges

Part 2. Bonds and Taxes for Roads and Bridges in the State

§ 3767. Erection and maintenance of roads and bridges; county-line bridges.

Cited in *Carteret County v. Sovereign Camp*, W. O. W., 78 F. (2d) 337.

§ 3769. Special tax to provide for bonds.

A sufficient reason for not requiring the issuance of execution on a judgment on county road and bridge bonds as a

prerequisite to an application for mandamus is that the law under which the bonds in judgment were issued requires the county commissioners to levy a tax for their payment. *Carteret County v. Sovereign Camp*, W. O. W., 78 F. (2d) 337, 338.

It would be unreasonable to require a bondholder to levy execution upon property alleged to belong to the county, when the law under which the bonds were issued provides a simple method of payment if the officers of the county will but perform their plain duty under the law. *Id.*

Art. 13. Cartways, Church Roads, and the Like

§ 3838(b). Neighborhood public roads.

Persons living along a highway which had been taken over by the State Highway Commission, and subsequently abandoned by it, are "interested citizens" within the meaning of this section, and may maintain a proceeding to have the road established as a "neighborhood public road." *Grady v. Grady*, 209 N. C. 749, 184 S. E. 512.

Art. 15. State Highway System (1921)

Part 1. In General

§ 3846(a). General purpose of law; control, repair and maintenance of highways.

See note under § 7748(b).

Part 1A. A Change of Systems

§ 3846(e7). No court action but by local road authorities.

Cited in *Reed v. State Highway, etc.*, Comm., 209 N. C. 648, 184 S. E. 513.

Part 2. State Highway Commission

§ 3846(j) Powers of commission.—

(q) The state highway and public works commission shall have authority to designate and appropriately mark certain highways of the state as truck routes, and any truck of a gross weight in excess of three tons for each axle operating on any highway in the state not designated by the state highway and Public Works Commission as a truck route shall at no time exceed a speed limit of twenty miles per hour. Any person violating the provisions of this section shall be guilty of a misdemeanor.

(r) The state highway and public works commission shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing right-of-way or the clearing of obstructions that, in the opinion of the commission, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the commission has agreed in writing to accept the property so acquired in exchange for that to be used by the commission, and when, in the opinion of the commission, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be affected thereby. (1921, c. 2, s. 10; 1923, c. 160, s. 1; 1923, c. 247; 1929, c. 138, s. 1; 1931, c. 145, s. 21, 25; 1933, c. 517, s. 1; 1935, c. 213, s. 1, c. 301; 1937, c. 297, s. 2.)

See note under § 7748(b). As to authorizing use of county prisoners on roads not within state systems, see § 1364(1).

Editor's Note.—The 1937 amendment added subsections (q) and (r) to this section. The rest of the section, not being affected by the amendment, is not set out here.

Public Laws 1937, c. 246, also amended this section by adding a subsection (q), as follows: "Wherever there ex-

ists two highways of the state system of approximately equivalent construction, convenience and distance between two or more points, the state highway and public works commission shall have authority, when in the opinion of the commission the public interest is served thereby, to designate one of said roads for heavy or truck-line traffic between said points, and to prohibit the use of the other or parallel road by heavy or truck-line traffic thereon; and in such instances the roads selected for heavy or truck-line traffic shall be so designated by signs conspicuously posted thereon, and the roads upon which heavy or truck-line traffic is prohibited shall likewise be so designated by signs conspicuously posted thereon showing the maximum load authorized for said roads. The operation of any vehicle whose gross load exceeds the maximum load shown on such signs over the road thus posted shall constitute a misdemeanor: Provided, that nothing herein shall prohibit a truck or other motor vehicle whose gross load exceeds that prescribed for the light traffic roads from using said light traffic road when the destination of said truck is located solely upon said light traffic road: Provided further, that nothing herein shall prohibit passenger or other light traffic vehicles from using any road or roads so designated for heavy or truck-line traffic."

Under *Brown v. United States*, 263 U. S. 78, 44 S. Ct. 92, 68 L. Ed. 171, and *Dohany v. Rogers*, 281 U. S. 362, 50 S. Ct. 299, 74 L. Ed. 904, 68 A. L. R. 434, it is likely that the taking of property for exchange purposes under the provisions of subsection (r) would be held to be for a public use. 15 N. C. Law Rev., No. 4, p. 365.

Part 3. Construction, Maintenance, and Repair of Highways

§ 3846(bb). Acquirement of land and deposits of materials; condemnation proceedings.—

The state highway and public works commission shall have the same authority and under the same provisions of law hereinbefore provided for construction of state highways for the acquirement of all rights of way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways in the state of North Carolina. The acquirement of a total of one hundred and twenty-five acres per mile of said parkways, including roadway and recreational and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. That the right of way acquired or appropriated may, at the option of the commission, be a fee simple title, and the nature and extent of the right of way and easements so acquired or appropriated shall be designated upon a map showing the location across each county, and, when adopted by the commission, shall be filed with the register of deeds in each county, and, upon the filing of said map, such title shall vest in the state highway and public works commission. The said commission is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the state highway and public works commission, payable out of the construction fund of said commission. (1921, c. 2, s. 22; 1923, c. 160, s. 6; 1931, c. 145, s. 23; 1935, c. 2; 1937, c. 42.)

Editor's Note.—The 1937 amendment inserted the second sentence of the above paragraph. As the rest of the section was not affected by the amendment it is not set out in this Supplement.

The amendatory act ratified the acquirement of areas for Blue Ridge Parkway, prohibited cutting of timber from areas under consideration and provided compensation for temporary restraint.

Right to Just Compensation Where Evidence Is Insufficient to Show Taking Was for Private Purpose.—Where there was no evidence upon the record showing that the taking over of a road as part of the county system was for a private purpose sufficient to raise an issue of fact,

plaintiff is remitted to his rights under this section for the recovery of just compensation. *Reed v. State Highway, etc., Comm.*, 209 N. C. 648, 184 S. E. 513.

Applied in *Calhoun v. State Highway, etc., Comm.*, 208 N. C. 424, 181 S. E. 271.

Art. 18. State Highway Patrol

§ 3846(zz). Oath of office; bond.

See § 323(b).

§ 3846(mmm). Number of state highway patrol increased; subordinate officers; salaries. — The state highway patrol, created and existing by virtue of chapter two hundred and eighteen of the Public Laws of one thousand nine hundred and twenty-nine, as amended [§§ 3846(yy)-3846(III)] shall consist of one person to be designated as major, and such additional subordinate officers and men as the commissioner of revenue, with the approval of the governor and advisory budget commission, shall direct. The captain [major], other officers, and members of the state highway patrol shall be paid such salary as may be established and fixed under the provisions of chapter two hundred seventy-seven, Public Laws of one thousand nine hundred and thirty-one, and chapter forty-six of the Public Laws of one thousand nine hundred and thirty-three, codified as sections 7521(k) et seq. (1935, c. 324, s. 1; 1937, c. 313, s. 1.)

§ 3846(mmm)1. Compliance with federal appropriation statute authorized.—In order that the state of North Carolina may receive the benefit of the appropriation provided in Senate Bill number one hundred and five, introduced in the United States Senate, January sixth, one thousand nine hundred and thirty-seven, which authorizes the secretary of agriculture to make available for expenditure funds for the establishment and maintenance of the state highway patrols in the various states of the United States, the commissioner of revenue, with the consent and approval of the governor and the council of state, is hereby authorized to accept and comply with the provisions of said act, if and when in the discretion of the governor and council of state it becomes necessary and proper to do so, in order that the state of North Carolina may receive such benefits as therein provided. (1937, c. 313, s. 2.)

Editor's Note.—Prior to the 1937 amendment the patrol was limited to 121 persons, and the captain was the ranking officer. While not specified in the amendment, it seems that "major" should be substituted for "captain" in the second sentence of this section.

§ 3846(ooo). Additional duties and authority of patrol; constituted peace officers; arrest power; jurisdiction.

For article discussing arrest without a warrant, see 15 N. C. Law Rev., No. 2, p. 101.

Art. 19. Management of County Roads Vested in State Highway Commission

§ 3846(1). County roads managed by state highway commission; trustees of road districts holding over; county commissioners.

Cited in *Grady v. Grady*, 209 N. C. 749, 184 S. E. 512.

§ 3846(7). Petition by county commissioners to change or abandon roads or build new roads.

Under this section the county commissioners petitioned that certain roads in the county be taken over as a part of the county system. Plaintiff, owner of part of the land involved, obtained a temporary injunction prohibiting the taking over of the road, claiming the taking was for a private and not a public purpose. The court found that

the taking was for a public purpose, and dismissed the action, it appearing from the pleadings that the proposed road would give four families access to the county-seat and that the road would constitute a part of a through scenic highway. *Reed v. State Highway, etc., Comm.*, 209 N. C. 648, 184 S. E. 513.

In taking over a road as a part of the highway system, the scenic value of such road and its necessity as a part of the system of scenic highways for the public may be considered in determining whether taking over the road is for a public or private purpose. Id.

CHAPTER 71

SALARIES AND FEES

Art. 2. Legislative Department

§ 3857(a). Compensation of employees of the general assembly; mileage.—The principal clerk of the general assembly and chief clerk appointed by secretary of state in the enrolling office and chief engrossing clerks of the house and senate shall be allowed the sum of seven dollars per day during the session of the general assembly, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The secretary to the speaker of the house of representatives, the secretary to the lieutenant-governor, the clerks to the finance and appropriation committees of both houses, the sergeant-at-arms, the assistants to the engrossing clerks, the assistant clerks to the principal clerks and the assistant sergeant-at-arms of the general assembly, and the assistants appointed by the secretary of state to supervise the enrollment of bills and resolutions, the reading clerks of the general assembly, shall receive the sum of six dollars per day, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The clerks to all committees which by the rules of either house of the general assembly are entitled to clerks, except as hereinabove provided, shall each receive five dollars per day during the session of the general assembly, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The chief page of the house of representatives and the senate shall receive four dollars per day during the session of the general assembly and mileage at the rate of five cents a mile from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive three dollars per day during the session of the general assembly and mileage at the rate of five cents a mile from their homes to Raleigh and return. All laborers of the first-class authorized by law or the rules of either the house of representatives or the senate shall receive three dollars and one-half per day during the session of the general assembly and all mileage at the rate of five cents per mile from their homes to Raleigh and return, and laborers of the second class the sum of three dollars per day and mileage at the rate of five cents per mile from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc 1, 272.)

Editor's Note.—The first 1937 amendment added the clerks to the committees on appropriations and finance to the list named in the second sentence. It also inserted the words "except as herein above provided" in the third sentence. The second 1937 amendment repealed the 1933 amendment and re-enacted the 1929 amendment, except as to pay of such clerks, which was raised to \$6.00 per day, and pay of ordinary pages which was raised from \$2.50 to \$3.00 per day.

Art. 3. Executive Department

§ 3872. Department of agriculture.—The salary of the commissioner of agriculture shall be five thousand dollars per annum, to be paid monthly out of the receipts of the agricultural department. (Rev., s. 2749; 1901, c. 479, s. 4; 1905, c. 529; 1907, c. 887, s. 1; 1913, c. 58; 1921, c. 35, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415.)

Editor's Note.—The 1937 amendment increased the salary by five hundred dollars.

§ 3874. Department of insurance. — The compensation of the insurance commissioner shall be six thousand (\$6,000.00) dollars per annum, payable monthly.

(1937, c. 342.)

Editor's Note.—Prior to the 1937 amendment the salary of the commission as specified in the first sentence was \$4,500 per annum. The rest of the section, not being affected by the amendment, is not set out here.

§ 3877. Adjutant-general.—The salary of the adjutant-general shall be five thousand dollars per annum. The adjutant-general shall reside at the state capital during his term of office. (Rev., s. 2750; Code, ss. 3275, 3730; 1899, c. 390, ss. 2, 3; 1879, c. 240, s. 10; 1883, c. 283, s. 2; 1907, c. 803, s. 1; 1911, c. 110, s. 1; 1915, c. 118; Ex. Sess. 1921, c. 53; 1933, c. 282, s. 6; 1935, c. 293; 1937, c. 415.)

Editor's Note.—The 1937 amendment increased the salary by five hundred dollars.

Art. 4. Judicial Department

§ 3884(a). Salaries of resigned or retired justices of supreme court and judges of superior courts.—Every justice of the supreme court and judge of the superior court who has heretofore resigned or retired from office at the end of his term, or who shall hereafter resign or retire at expiration of his term, who has attained the age of sixty-five (65) years at the date of his resignation or retirement, and who has served for fifteen (15) years on the supreme court or on the superior court, or on the supreme and superior courts combined or twelve consecutive years on the supreme court, or who, having served one full term on either the supreme or superior court, and while still in active service thereon, shall have become totally disabled through accident or disease to carry on the duties of said office; or who by reason of such accident, without fault on his part, shall suffer such physical impairment as not to be able to efficiently perform the duties of his office and who retires at the end of his term, shall receive for life two-thirds ($\frac{2}{3}$) of the annual salary from time to time received by the justices of the supreme court or judges of superior court, respectively, payable monthly; provided, that any such justice or judge, who has or shall have served as such for twenty-five years or longer (whether continuously or not), and whose seventieth birthday shall occur within six months next succeeding his resignation or retirement, shall be entitled to all of the benefits of this section from and after the date of his resignation or retirement, and shall also be subject to the other provisions of this section. The provisions herein as to the amount of life-time pay shall relate back to and become effective as of the fourth day of March, one thousand nine hundred and twenty-one, and the state treasurer is authorized and directed to pay on the warrant of the state auditor the salary of any justice or judge as affected by such

provisions, less any amount heretofore paid. (1921, c. 125, s. 1; Ex. Sess. 1921, c. 20, ss. 1, 2; 1927, c. 133, s. 201; 1935, cc. 233, 400; 1937, c. 199, s. 1.)

Editor's Note.—The 1937 amendment, inserting the provision as to disability through accident or disease provides: "The provisions of this amendatory act shall apply without regard to the age of the judge or justice affected."

Art. 5. Solicitors, Jurors, and Witnesses

§ 3890(a) Appropriation for expenses. —

Each solicitor shall receive, in addition to the salary named in section three thousand eight hundred and ninety of the Consolidated Statutes of North Carolina, the sum of five hundred (\$500.00) dollars per annum, which will cover all of his expenses while engaged in duties connected with his office. Said sum shall be paid in equal monthly installments out of the state treasury upon warrant duly drawn thereon. (1923, c. 157, s. 2; 1933, c. 78, s. 2; 1937, c. 348.)

Editor's Note.—This section, first inserted by the act of 1923 and providing \$750 for expenses, was repealed in 1933. The present section was codified from the 1937 act.

§ 3893. Fees and mileage of witnesses.

Editor's Note.—Public Laws 1937, c. 240, provides that Public Laws 1933, c. 40, amending this section by adding the proviso abolishing witness fees for officers on salaries, shall not apply to Iredell county.

Art. 7. County Officers

§ 3904(j). Certain counties not subject to sections 3904(c)-3904(i). — Sections 3904(c)-3904(i) shall not apply to the counties of: Cabarrus, Chowan, Cleveland, Columbus, Franklin, Iredell, Lincoln, Martin, Mecklenburg; Montgomery, Moore, New Hanover, Pitt, Richmond, Robeson, Rockingham, Surry, Union, Jackson, Swain, Buncombe, Rowan, Orange, Avery, Wayne, Nash, Wilson, Bladen, Cumberland, Ashe, Edgecombe, Tyrrell, Person, Duplin, Vance, Davie, Guilford, Onslow, Washington, Alleghany, Haywood, Davidson, Burke, Stokes, Franklin, Catawba, Lenoir, Jones, Pamlico, Caldwell, Caswell. Provided that section 3904(c) shall apply to Iredell county. (1935, c. 379, s. 8, c. 494; 1937, cc. 148, 149, 290.)

Editor's Note.—The 1937 amendments struck out Bertie and Yancey from the list of counties in this section, and added the proviso as to Iredell county.

§ 3907. Local modification as to fees of registers of deeds.—

In Montgomery county the register of deeds shall receive, in addition to all other fees now allowed by law for recording instruments authorized to be registered, the sum of ten cents each per name in excess of four, for cross-indexing such names which appear on all instruments presented in his office and recorded therein. (1937, c. 137.)

Editor's Note.—The 1937 amendment added the above provision to this section. The rest of the section, not being affected by the amendment, is not set out here.

§ 3908. Sheriffs.

New Trial Awarded Where Number of Prisoners Conveyed Is Not Shown.—Where, in an action by a sheriff to recover compensation for transportation of prisoners under this section, it does not appear from the facts agreed how many prisoners were conveyed to jails in other counties by the sheriff or how many miles such prisoners were conveyed, a new trial will be awarded in order that the facts necessary to a determination of the question may be found and a proper adjudication made thereon. *Patterson v. Swain County*, 208 N. C. 453, 181 S. E. 329.

§ 3909. Local modifications as to fees of sheriffs.—

The sheriff of Wayne county shall receive the following fees, in addition to other fees allowed by law, for services of the following processes:

For arrest fee for state warrant.....	\$ 2.00
For arrest fees for capias.....	2.00
Fees for claim and delivery.....	3.00
Fees for ejectment proceedings.....	2.00
Fees for service of executions on civil judgments	2.00

(1937, c. 254.)

Editor's Note.—The 1937 amendment added the above paragraph at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

Art. 8. Township Officers

§ 3923. Justice of the peace.

Editor's Note.—For schedule of fees in Wake and Warren counties, see Public Laws 1937, chapters 136 and 187, respectively.

CHAPTER 71A SECURITIES LAW

§ 3924(aa). Administration of Capital Issues Law transferred to secretary of state.—All of the authority, rights, powers, duties and functions heretofore vested in the utilities commission and the utilities commissioner by virtue of chapter one hundred forty-nine, Public Laws one thousand nine hundred twenty-seven, and amendments thereto [§§ 3924(a)-3924(z)], relating to the sales of "stocks, bonds and other securities," known as the "Capital Issues Law," are hereby transferred to the secretary of state of the State of North Carolina, who shall thenceforth perform all the functions with relation to the subjects dealt with in said chapter one hundred forty-nine, Public Laws one thousand nine hundred twenty-seven, and amendments thereto, in such a manner as prescribed in said acts, and with as full authority as if the said secretary of state had been originally and specifically named therein. (1937, c. 194.)

CHAPTER 72 SHERIFF

Art. 3. Duties of Sheriff

§ 3936. Execute process; penalty for false return.

Where Sheriff's Motion for Non-Suit Properly Granted.—Plaintiffs instituted action against the sheriff and bondsmen for damages caused by alleged false return of summons. The sheriff's return was regular upon its face, but each plaintiff testified that service was not made on him, but did not testify as to whether service was made on the other plaintiff, and there was no evidence corroborating plaintiffs' testimony. It was held that defendants' motion for judgment as of non-suit was properly granted. *Penley v. Rader*, 208 N. C. 702, 182 S. E. 337.

CHAPTER 73 STATUTORY CONSTRUCTION

§ 3947(a). No public-local or private act may amend or repeal public law unless latter is referred to in caption.

The citation to this section should read: (1929, c. 250, s. 1.)

CHAPTER 78

TRUSTEES

Art. 1. Investment and Deposit of Trust Funds

§ 4018. Certain investments deemed cash.

Conceding that a bank breached its duty as trustee in failing to sell certain stock for reinvestment under this section, its wrongful act will not relieve the estate of the statutory liability to the prejudice of depositors and creditors of the bank, who had no notice of the terms of the trust, and were entitled to regard the statutory liability as additional security, and notice to the bank not being notice to the depositors and other creditors, since the fact of the establishment of the trust did not appear upon the books of the bank. *Hood v. North Carolina Bank, etc.*, Co., 209 N. C. 367, 184 S. E. 51.

§ 4018(a). Investment of trust funds in county bonds.

Cited, in dissenting opinion, in *Hood v. North Carolina Bank, etc., Co.*, 209 N. C. 367, 184 S. E. 51.

§ 4018(b). Investment in building, savings and loan associations.—

Provided further, that such funds may be invested in stock of any federal savings and loan association organized under the laws of the United States, upon approval of an officer of the Home Loan Bank at Winston-Salem, or such other governmental agency as may hereafter have supervision of such associations. (1933, c. 549, s. 1; 1937, c. 14.)

Editor's Note.—The 1937 amendment added the above proviso at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

§ 4018(c). Investment in registered securities.

As to effect of section, see 13 N. C. Law Rev., No. 4, p. 386.

CHAPTER 78A

UNIFORM PRINCIPAL AND INCOME ACT

§ 4035(1). Definitions.—"Principal" as used in this chapter means any realty or personalty which has been so set aside or limited by the owner thereof or a person thereto legally empowered that it and any substitutions for it are eventually to be conveyed, delivered or paid to a person, while the return therefrom or use thereof or any part of such return or use is in the meantime to be taken or received by or held for accumulation for the same or other person;

"Income" as used in this chapter means the return derived from principal;

"Tenant" as used in this chapter means the person to whom income is presently or currently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution;

"Remainderman" as used in this chapter means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law;

"Trustee" as used in this chapter includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee. (1937, c. 190, s. 1.)

§ 4035(2). Application of the chapter; powers of settlor.—This chapter shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and

remaindermen, in all cases where a principal has been established with, or, unless otherwise stated hereinafter, without the interposition of a trust; except that in the establishment of the principal provision may be made touching all matters covered by this chapter, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this chapter. (1937, c. 190, § 2.)

§ 4035(3). Income and principal; disposition.—

(1) All receipts of money or other property paid or delivered as rent of realty or hire of personality or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this chapter.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, or property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal unless otherwise expressly provided in this chapter. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal.

(3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him if already in his possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established, while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law. (1937, c. 190, s. 3.)

§ 4035(4). Apportionment of income. — Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to

recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal. (1937, c. 190, s. 4.)

§ 4035(5). Corporate dividends and share rights.

—(1) All dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations, other than the declaring corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend, either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(3) Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursements of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(4) Where a corporation succeeds another by merger, consolidation or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to, or in substitution for, their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the cor-

poration as the one on which the stockholders entitled thereto are determined, or in default thereof the date of declaration of the dividend. (1937, c. 190, s. 5.)

§ 4035(6). Premium and discount bonds. — Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized thereon shall fall upon or inure to the principal. (1937, c. 190, s. 6.)

§ 4035(7). Principal used in business. — (1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(2) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of the property at the end of such period, the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon principal. (1937, c. 190, s. 7.)

§ 4035(8). Principal comprising animals. — Where any part of the principal consists of animals employed in business, the provisions of section 4035(7) shall apply; and in other cases where the animals are held as a part of the principal, partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income. (1937, c. 190, s. 8.)

§ 4035(9). Disposition of natural resources. — Where any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas or other natural resources, and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, lease or otherwise develop such natural resources, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such proceeds, if received as rent on a lease, shall be deemed income, but if received as consideration, whether as royalties or otherwise, for the permanent severance of such natural re-

sources from the lands, shall be deemed principal to be invested to produce income. Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own benefit. (1937, c. 190, s. 9.)

§ 4035(10). Principal subject to depletion. — Where any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five per centum per annum of its fair inventory value, or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal. (1937, c. 190, s. 10.)

§ 4035(11). Unproductive estate. — (1) Where any part of a principal in the possession of a trustee consists of realty or personalty which for more than a year, and until disposed of as hereinafter stated, has not produced an average net income of at least one per centum per annum of its fair inventory value, or in default thereof its market value at the time the principal was established, or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death his personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of five per centum per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property or in default thereof its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property, less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one year after the trustee first received the property if then unproductive, otherwise one year after it became unproductive.

(4) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been de-

tayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(5) In the case of successive tenants the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income. (1937, c. 190, s. 11.)

§ 4035(12). Expenses; trust estates.—(1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation except commissions computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in section 4035(11), shall be paid out of principal, subject to the provisions of sub-section two of section 4035(11).

(2) All other expenses, including trustee's commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and cost of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal under, the terms of sub-section two of section 4035(3) shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to sub-section one which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in sub-section two, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement. (1937, c. 190, s. 12.)

§ 4035(13). Expenses; non-trust estates. — (1) The provisions of section 4035(12), so far as applicable and excepting those dealing with costs of, or special taxes, or assessments for, improvements to property, shall govern the apportionment of ex-

penses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate, and without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in sub-section one the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, where such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant, except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the "American Experience Tables of Mortality," and no other evidence of duration or expectancy shall be considered. (1937, c. 190, s. 13.)

§ 4035(14). Uniformity of interpretation.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1937, c. 190, s. 14.)

§ 4035(15). Title of chapter.—This chapter may be cited as the Uniform Principal and Income Act. (1937, c. 190, s. 15.)

CHAPTER 80

WIDOWS

Art. 2. Dower

§ 4101. Dower not affected by conveyance of husband; exception.

Wife Not Joining in Execution of Deeds of Trust Acquires No Dower Right.—Where a debt secured by a purchase money deed of trust was divided, and two deeds of trust were substituted for the original deed of trust, which was canceled, and the wife of the grantee did not join in executing any of the deeds of trust, she acquired no dower right in the land, the original debt for the purchase money not having been extinguished. *Case v. Fitzsimons*, 209 N. C. 783, 184 S. E. 818.

§ 4103. Conveyance of home site without wife's signature.—

Provided further, that all married women under the age of twenty-one shall have the same privilege to renounce their dower rights in and to the home site as is now conferred upon married women twenty-one years and over, and the deed or other conveyances thereof made by the owner of a home site with the voluntary signature and assent of his wife, signified on her private examination according to law, even though the wife be under twenty-one years of age, shall be valid and immediately pass possession and title thereto as though said married women were twenty-one years or over: Provided further, that all conveyances of a home site, as defined in this section, heretofore made

by the owner thereof, with the voluntary signature and assent of his wife, signified on her private examination according to law, shall be valid and pass the title and possession thereto as of the date thereof, even though the wife of said owner was under twenty-one years of age at the time of such signature and assent. (1919, c. 123; 1937, c. 69.)

Editor's Note.—The 1937 amendment directed that the above provisos be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

In *Coker v. Virginia-Carolina Joint-Stock Land Bank*, 208 N. C. 41, 178 S. E. 863, it was held that § 4103(b) had no application where a minor's wife joined in a mortgage placed by her husband upon his home site, and declared void the mortgage upon its disaffirmance by the wife within three years after she attained her majority. In order to obviate such a result in the future, the amendment was passed to make valid and binding the properly executed renunciation of her dower rights in her husband's home site by a married woman under the age of 21. This amendment is logical and will tend further to stabilize real estate titles. 15 N. C. Law Rev., No. 4, pp. 354, 355.

§ 4103(b). Renouncement of dower.

See 13 N. C. Law Rev., No. 4, p. 375, for an analysis of this section, where it was stated that P. L. 1923, ch. 67, § 2, which was amended by this section, was itself an amendment to § 2180.

Art. 4. Year's Allowance

Part 1. Nature of Allowance

§ 4109. Amount allowed. — Except in cases in which a large allowance is hereinafter provided for, the value of a year's allowance shall be five hundred dollars, and one hundred fifty dollars in addition thereto for every member of the family besides the widow. (Rev., s. 3092; Code, s. 2118; 1868-9, c. 93, s. 10; 1937, c. 225.)

Editor's Note.—The 1937 amendment increased the amounts provided for in this section from three to five hundred dollars, and from one to one hundred fifty dollars, respectively.

CHAPTER 81

WILLS

Art. 1. Execution of Will

§ 4131. Formal execution.

Applied in *In re Will of Roediger*, 209 N. C. 470, 184 S. E. 74.

Cited in *Reynolds v. Reynolds*, 208 N. C. 578, 182 S. E. 341.

Art. 2. Revocation of Will

§ 4133. Revocation by writing or by cancellation or destruction.

Interlineations and Annotations Held Insufficient to Show Revocation.—Where testator, in his own handwriting, makes certain interlineations and annotations upon his nuncupative will and marks through certain words and it appears that such alterations are insufficient to constitute a holographic will and were made with the intent of altering the will at some future date, but that such alterations were not made with the intent to revoke the nuncupative will in whole or in part, such interlineations and annotations are insufficient to show a revocation of the nuncupative will, intent to revoke being essential to revocation by defacement or obliteration of the will by testator under this section. In *re Will of Roediger*, 209 N. C. 470, 184 S. E. 74.

Art. 3A. Depository for Wills

§ 4138(a). Depositories in offices of clerks of superior court where living persons may file wills.—The clerk of the superior court in each county of North Carolina shall be required to keep a receptacle or depository in which any person who

desires to do so may file his or her will for safe keeping; and the clerk shall make a charge of fifty cents (50c) for the filing of such will, and shall, upon written request of the testator, or the duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn from said depository or receptacle at any time prior to the death of the testator: Provided, that the contents of said will shall not be made public or open to the inspection of any one other than the testator or his duly authorized agent until such time as the said will shall be offered for probate.

This section shall not apply to Guilford county. (1937, c. 435.)

Editor's Note.—This section, which makes it possible for a testator during his lifetime to file his will for safekeeping with the probate judge, represents a rather progressive step in the law of wills. If taken advantage of by testators, it may prevent the loss or fraudulent destruction of many validly executed wills, and may tend to prevent the offer of forged wills for probate and contests of wills upon the grounds of fraud, undue influence, and mental incapacity. Similar statutes have been enacted in several states in this country. 15 N. C. Law Rev., No. 4, p. 353.

Art. 4. Probate of Will

§ 4145. Probate conclusive until vacated.

Title of Innocent Purchasers Not Affected by Judgment Setting Aside Will.—Where the devisees named in a will, which has been duly probated in common form, sell and dispose of part of the lands devised to innocent purchasers for value without notice, and thereafter caveat proceedings are instituted and the will set aside, the heirs at law, by operation of the judgment setting aside the will, become tenants in common in the lands not disposed of, but the title conveyed by the devisees named in the paper writing to purchasers for value without notice, or knowledge of facts from which a purpose to file caveat proceedings—could be intimated, is not affected, the probate in common form being conclusive evidence of the validity of the will until it is attacked by caveat proceedings duly instituted. *Whitehurst v. Hinton*, 209 N. C. 392, 184 S. E. 66.

When Devisees Entitled to Rents and Profits until Probate Set Aside.—Where there is no evidence tending to show that at any time prior to the institution of the caveat proceeding, the defendants, or their ancestors, had any knowledge or intimation that the plaintiffs would attack the validity of the will and there is no evidence tending to show that any of the devisees in said will procured its execution by undue or fraudulent influence, hence the defendants and their ancestors were entitled to the rents and profits of the lands devised to them until the probate was set aside and the will adjudged void. *Whitehurst v. Hinton*, 209 N. C. 392, 404, 184 S. E. 66.

Art. 5. Caveat to Will

§ 4158. When and by whom caveat filed.

Good Faith Claimants Protected until Probate Attacked.—All persons who claim in good faith under a will which has been duly probated in common form as provided by statute are protected by its provisions, until the probate is attacked by a caveat proceeding instituted as provided by this section. *Whitehurst v. Hinton*, 209 N. C. 392, 403, 184 S. E. 66.

Persons Having Pecuniary Interest May Caveat.—Delete the citation of *In re Will of Davis* in the paragraph under this catchline and substitute in lieu thereof; 182 N. Y. 472.

Applied in *In re Will of Roediger*, 209 N. C. 470, 184 S. E. 74.

§ 4159. Bond given and cause transferred to trial docket.

The probate of a will in solemn form is a proceeding in rem, and the issue raised by the caveat must be tried by a jury and the propounder and caveator may not waive trial by jury and submit the issue to the court under an agreed statement of facts. In *re Will of Roediger*, 209 N. C. 470, 184 S. E. 74.

§ 4159(a). Prosecution bond required in actions to contest wills.—When any action is instituted to

contest a will the clerk of the superior court will require the prosecution bond required in other civil actions: Provided, however, that provisions for bringing suit in forma pauperis shall also apply to the provisions of this section. (1937, c. 383.)

Editor's Note.—The purpose of this section is not entirely clear. The usual method of contesting a will is to file a caveat, either at the time the will is presented for probate, or within seven years thereafter. This is said to be neither a civil action nor a special proceeding, but is in the nature of a proceeding in rem, in which the propounder has the burden of establishing the formal execution of the will, and the caveators the burden of showing that it is not a valid will. It may be the purpose of the statute to require the propounder to give bond, when a caveat is filed, so as to have the costs secured by both parties. 15 N. C. Law Rev., No. 4, p. 352.

§ 4161. Caveat suspends proceedings under will.

The filing of a caveat suspends further proceedings in the administration of the estate, but does not deprive the executor or executrix of the right to the possession of the assets of the estate. Elledge v. Hawkins, 208 N. C. 757, 182 S. E. 468.

Art. 6. Construction of Will

§ 4162. Devise presumed to be in fee.

Section Does Not Apply to Devise to Trustee.—Where a devise created no interest in certain lands in favor of testatrix' husband, but devised the lands to him in an active trust for the purpose of carrying out the wishes of her father for the care of his widow, this section has no application to the devise to the husband as trustee in an active trust with direction for the vesting of the lands in her heirs upon the termination of the trust. Stephens v. Clark, 211 N. C. 84, 189 S. E. 191.

Devise Creating a Life Estate.—In Alexander v. Alexander, 210 N. C. 281, 186 S. E. 319, it was held that the devise created an estate limited at most to the life of the widow, and did not convey to the widow a fee simple, notwithstanding the provisions of this section and notwithstanding the rule that a gift of an estate to a person generally or indefinitely with power of disposition ordinarily carries the fee, since it is apparent from the words of the devise that testator did not intend to confer the fee simple.

Applied in Morris v. Waggoner, 209 N. C. 183, 183 S. E. 353.

§ 4166. Lapsed and void devises pass under residuary clause.

This section should not be construed with § 4168. Neither section is ambiguous and they are not interrelated. Beach v. Gladstone, 207 N. C. 876, 877, 178 S. E. 546.

Legacy Not Lapsed by Fact That Legatee Predeceased Testator.—In Beach v. Gladstone, 207 N. C. 876, 178 S. E. 546, a judgment that a legacy did not lapse by reason of fact that legatee predeceased testator is affirmed, it appearing that legatee would have been distributee of testator had she survived him.

CHAPTER 82

CRIMES AND PUNISHMENTS

SUBCHAPTER I. GENERAL PROVISIONS

Art. 1. Felonies and Misdemeanors

§ 4171. Felonies and misdemeanors defined.

Indictment Must Use Word "Feloniously."—In accord with original. See State v. Callett, 211 N. C. 563, 191 S. E. 27.

Art. 2. Principals and Accessories

§ 4175. Accessories before the fact; trial and punishment.

Sufficient Evidence to Submit Question to Jury.—Evidence tending to show that defendant knew of and participated in the plans or preparations made for the killing of deceased, that defendant procured a coat for the killer and furnished an automobile as a means of flight after the murder had been committed is held sufficient to be

submitted to the jury on an indictment drawn under this section. State v. Williams, 208 N. C. 707, 182 S. E. 131.

Applied in State v. Holland, 211 N. C. 284, 189 S. E. 761.

Cited in State v. Hampton, 210 N. C. 283, 186 S. E. 251; In re Malicord, 211 N. C. 684, 191 S. E. 730.

SUBCHAPTER IV. OFFENSES AGAINST THE PERSON

Art. 7. Homicide

§ 4200. Murder in the first and second degree defined; punishment.

II. MURDER IN GENERAL.

Applied in State v. Hodgin, 210 N. C. 371, 186 S. E. 495.

Cited in State v. Horne, 209 N. C. 725, 184 S. E. 470.

IV. MURDER IN THE SECOND DEGREE.

A killing with a deadly weapon raises the presumption that the homicide was murder in the second degree, and if the State seeks a conviction of murder in the first degree it has the burden of proving beyond a reasonable doubt that the homicide was committed with deliberation and premeditation. State v. Perry, 209 N. C. 604, 184 S. E. 545.

V. PLEADING AND PRACTICE.

Remedy for Alternative Indictment Held to Be by Motion for Bill of Particulars.—After the return of a verdict of guilty of murder in the first degree, defendant moved in arrest of judgment for that the indictment was alternative, indefinite, and uncertain. It was held that although the indictment was alternative, either charge constituted murder in the first degree under this section, informing defendant of the crime charged, and defendant's remedy, if he desired greater certainty, was by motion for a bill of particulars under § 4613. State v. Puckett, 211 N. C. 66, 189 S. E. 183.

Where Jury May Be Instructed to Return First Degree Verdict or Not Guilty.—It is only in cases where all of the evidence tends to show that the homicide was committed by means of poison, lying in wait, imprisonment, starving, torture, or in the perpetration or attempt to perpetrate a felony, that the trial judge can instruct the jury that they must return a verdict of murder in the first degree or not guilty. State v. Perry, 209 N. C. 604, 605, 184 S. E. 545.

Where all the evidence is to the effect that a murder was committed in the perpetration of a robbery, it is not error for the court to limit the jury to a verdict of guilty of murder in the first degree or not guilty under this section. State v. Gosnell, 208 N. C. 401, 181 S. E. 323.

§ 4201. Punishment for manslaughter.

Section Does Not Constitute Involuntary Manslaughter a Misdemeanor.—The amendment to this section by ch. 249, Public Laws of 1933, which added a proviso that in cases of involuntary manslaughter the defendant shall be punishable by fine or imprisonment, or both, in the discretion of the court, does not constitute involuntary manslaughter a misdemeanor instead of a felony, the effect of the proviso being to mitigate punishment in cases of involuntary manslaughter, and not to set up involuntary manslaughter as a separate offense. State v. Dunn, 208 N. C. 333, 180 S. E. 708.

Thus the Superior Court has jurisdiction of a prosecution under the statute although the fatal accident occurred within the territorial jurisdiction of a city court having exclusive original jurisdiction of misdemeanors. State v. Leonard, 208 N. C. 346, 180 S. E. 710.

Art. 8. Rape and Kindred Offenses

§ 4204. Punishment for rape.

Applied in State v. Jackson, 211 N. C. 202, 189 S. E. 510.

§ 4209. Obtaining carnal knowledge of virtuous girls between twelve and sixteen years old.

Cited in State v. Cain, 209 N. C. 275, 183 S. E. 300.

Art. 11. Kidnapping and Abduction

§ 4221. Punishment for kidnapping.

Applied in State v. Beasley, 208 N. C. 318, 180 S. E. 598

Art. 12. Abortion and Kindred Offenses

§ 4226. Using drugs or instruments to destroy unborn child.

Evidence of Disease Facilitating Abortion Properly Ex-

cluded.—In a prosecution under this and the following section, evidence offered by the defendant tending to show that the deceased was suffering from a disease which facilitated the abortion was not relevant to the issue involving the defendant's guilt as charged in the indictment. There was no error in the exclusion of such evidence. *State v. Evans*, 211 N. C. 458, 459, 190 S. E. 724.

Admission of evidence that woman took an anaesthetic was not prejudicial. *State v. Evans*, 211 N. C. 458, 459, 190 S. E. 724.

SUBCHAPTER V. OFFENSES AGAINST THE HABITATION AND OTHER BUILDINGS

Art. 14. Burglary and Other House-Breakings

§ 4232. First and second degree burglary.

Sufficient Evidence to Submit Question of First Degree Burglary to Jury.—Evidence that the house was broken into by forcing the door open, that the time was late at night, and that the prosecuting witness and his wife were asleep in the room entered, together with evidence that tracks in the freshly fallen snow were followed and led to defendant's room in another house in a distant part of the city, where defendant was apprehended, is held sufficient to be submitted to the jury on the question of defendant's guilt of burglary in the first degree. *State v. Oakley*, 210 N. C. 206, 186 S. E. 244.

Applied in *State v. Robertson*, 210 N. C. 266, 186 S. E. 247; *State v. Walls*, 211 N. C. 487, 191 S. E. 232.

§ 4233. Punishment for burglary.

Quoted in *State v. Oakley*, 210 N. C. 206, 186 S. E. 244.

§ 4236. Preparation to commit burglary or other house-breakings.

A sentence of not less than twenty-five nor more than thirty years upon a plea of guilty of possession of weapons and implements for house breaking, in violation of this section is within the discretion of the court conferred by the statute, and is not objectionable as a cruel and unusual punishment within the meaning of Art. I, sec. 14, of the Constitution of North Carolina. *State v. Cain*, 209 N. C. 275, 183 S. E. 300.

§ 4237. Breaking into or entering railroad cars.

Cited in *State v. Hendricks*, 207 N. C. 873, 178 S. E. 557.

Art. 15. Arson and Other Burnings

§ 4245(a). Willful and malicious burning of personal property.

Evidence that defendant's car was driven away from defendant's house shortly before defendant's personal property therein was destroyed by fire, and that the car had been driven to the house several times during the days preceding the fire, and that the occupants of the car were heard in the house, is held insufficient, in the absence of evidence that defendant was one of the occupants of the car, to resist defendant's motions for judgment as of nonsuit in a prosecution under this section, although there was ample evidence that the fire was of incendiary origin and destroyed personal property of defendant which had been insured by him. *State v. Simms*, 208 N. C. 459, 181 S. E. 269.

§ 4246. Attempting to burn dwelling-houses and certain other buildings.

Cited in *State v. Hampton*, 210 N. C. 283, 186 S. E. 251.

SUBCHAPTER VI. OFFENSES AGAINST PROPERTY

Art. 16. Larceny

§ 4250. Receiving stolen goods.

This section makes guilty knowledge one of the essential elements of the offense of receiving stolen goods. This knowledge may be actual, or it may be implied when the circumstances under which the goods were received are sufficient to lead the party charged to believe they were stolen. *State v. Stathos*, 208 N. C. 456, 181 S. E. 273.

It is necessary to establish either actual or implied knowledge on the part of the person charged of the facts that the goods were stolen. The question involved is whether the person charged had knowledge of the fact that the goods

had been stolen at the time he received them, and not whether a reasonably prudent man in the transaction of his business would have gained such knowledge under the circumstances. Id.

The test is as to the knowledge, actual or implied, of the defendant, and not what some other person would have believed from the facts attending the receipt of the goods. Id.

Applied in *State v. Whitley*, 208 N. C. 661, 182 S. E. 338; *State v. Camby*, 209 N. C. 50, 182 S. E. 715.

Cited in *State v. Ray*, 209 N. C. 772, 184 S. E. 836.

§ 4251. Larceny of property, or the receiving of stolen goods, not exceeding twenty dollars in value.

Knowledge that the goods were stolen at the time of receiving them is an essential element of the offense of receiving stolen goods, and although guilty knowledge may be inferred from incriminating circumstances, a charge that such knowledge might be actual or implied, without specifying that it would have to exist at the time of the receiving, is erroneous. *State v. Spaulding*, 211 N. C. 63, 188 S. E. 647.

§ 4265(a). Destruction or taking of soft drink bottles.—It shall be unlawful for any person, firm or corporation, or any employee thereof, to maliciously take up, carry away, destroy or in any way dispose of bottles or other property belonging to any bottler, bottling company, person, firm or corporation engaged in the business of bottling and/or distributing in bottles or other closed containers soda water, coca-cola, pepsi-cola, cheri-wine, chero-cola, ginger ale, grape and other fruit juices or imitations thereof, carbonated or malted beverages and like preparations commonly known as soft drinks. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1937, c. 322, ss. 1, 2.)

Art. 17A. Robbery with Firearms

§ 4267(a). Made a felony.

Where an indictment charged defendants with robbery with firearms from the companion of the person they were formerly charged with killing, the two offenses having been committed at the same time, and evidence of guilt of one of the offenses is substantially the same as the evidence of guilt of the other, a special verdict holding plea of former jeopardy bad supports the court's determination of the plea of former conviction against defendants, the charges being for separate offenses committed against different persons. *State v. Dills*, 210 N. C. 178, 185 S. E. 677, distinguishing *State v. Clemmons*, 207 N. C. 276, 176 S. E. 760.

Art. 18. Embezzlement

§ 4268. Embezzlement of property received by virtue of office or employment.

Fraudulent intent is a necessary element of the statutory offense of embezzlement and the State must prove such intent beyond a reasonable doubt, but direct proof is not necessary, it being sufficient if facts and circumstances are shown from which it may be reasonably inferred. *State v. McLean*, 209 N. C. 38, 182 S. E. 700.

Meaning of Fraudulent Intent.—Fraudulent intent within the meaning of this section is the intent to willfully or corruptly use or misapply the property of another for purposes other than that for which it is held, and evidence tending to show that defendant, without authorization, applied funds of his employer to his own use, although defendant testified that he used the funds to pay a debt due him by his employer, is sufficient to be submitted to the jury on the question of fraudulent intent. *State v. McLean*, 209 N. C. 38, 182 S. E. 700.

Art. 19. False Pretenses and Cheats

§ 4284. Obtaining entertainment at hotels and boarding-houses without paying therefor.

Editor's Note.—By Public Laws 1937, c. 168, the application of Public Laws 1929, c. 103, as amended, was extended to Lee county.

SUBCHAPTER VII. CRIMINAL TRESPASS

Art. 22. Trespasses to Land and Fixtures

§ 4311(a). **Starting fires within five hundred feet of areas under protection of state forest service.**—It shall be unlawful for any person, firm or corporation to start or cause to be started any fire or ignite any material in any of the areas of woodlands under the protection of the state forest service or within five hundred feet of any such protected area, between the first day of April and the fifteenth day of June, inclusive, or between the fifteenth day of October and the first day of December, inclusive, in any year, without first obtaining from the state forester or one of his duly authorized agents a permit to set out fire or ignite any material in such above mentioned protected areas; that no charge shall be made for the granting of said permits. This section shall not apply to any fires started or caused to be started within five hundred feet of a dwelling house. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court. (1937, c. 207.)

SUBCHAPTER VIII. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY

Art. 24. Offenses against Public Morality and Decency**§ 4336. Crime against nature.**

Applied in *State v. Callett*, 211 N. C. 563, 191 S. E. 27.

§ 4339. Seduction.

Testimony of Woman Must Be Corroborated as to Each Element.—

In accord with original. See *State v. Forbes*, 210 N. C. 567, 187 S. E. 760.

Insufficient Evidence to Show Promise of Marriage.—In prosecution for seduction, the only evidence in support of the testimony of prosecutrix on the essential element of promise of marriage was the testimony of a witness that prosecutrix had told the witness that she and defendant were going to be married, and the further testimony that she had seen prosecutrix and defendant together over a certain period. No other witness testified that prosecutrix and defendant had been seen together. This is not sufficient to constitute proof of the promise of marriage by facts and circumstances independent of the testimony of prosecutrix, and defendant's motion to nonsuit should have been granted. *State v. Forbes*, 210 N. C. 567, 187 S. E. 760.

Burden of Proof on State.—In order to convict, the burden of proof is upon the State to show beyond a reasonable doubt that the seduction was accomplished under and by means of the promise of marriage, and that the prosecutrix was at that time an innocent and virtuous woman. It must affirmatively appear that the inducing promise preceded the intercourse, and that the promise was absolute and not conditional. *State v. Wells*, 210 N. C. 738, 188 S. E. 326, holding evidence insufficient to establish that seduction was induced by previous unconditional promise of marriage.

§ 4352. Local: Using profane or indecent language on public highways.

Editor's Note.—Public Laws of 1937, c. 9, struck out Perquimans from the list of exempted counties, thereby making this section applicable to such county.

SUBCHAPTER IX. OFFENSES AGAINST PUBLIC JUSTICE

Art. 26. Perjury

§ 4369. **False oath to procure benefit of insurance policy or certificate.**—Any person who shall wilfully and knowingly present or cause to be presented a false or fraudulent claim, or any proof in support of such claim, for the payment of a loss,

or other benefits, upon a contract of insurance; or prepares, makes or subscribes to a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such claim, shall be punishable by imprisonment for not more than five years or by a fine of not more than five hundred (\$500.00) dollars, or by both such fine or imprisonment within the discretion of the court. (Rev., s. 3487; 1899, c. 54, s. 60; 1913, c. 89, s. 28; 1937, c. 248.)

Art. 28. Obstructing Justice**§ 4379. Failing to aid police officers.**

Stated in *Tomlinson v. Norwood*, 208 N. C. 716, 182 S. E. 659.

Art. 31. Prison Breach and Prisoners**§ 4409(a). Classification and commutation of time for prisoners other than state prisoners.**

Editor's Note.—The mandatory provisions of this section with reference to the use of stripes were repealed by Public Laws 1937, c. 88, s. 2.

Art. 31A. Custodial Institutions

§ 4409(1). **Persuading inmates to escape.**—It shall be unlawful for any parent, guardian, brother, sister, uncle, aunt, or any person whatsoever to persuade or induce to leave, carry away, or accompany from any state institution, except with the permission of the superintendent or other person next in authority, any boy or girl, man or woman, who has been legally committed or admitted under suspended sentence to said institution, by juvenile, recorder's, superior, or any other court of competent jurisdiction. (1935, c. 307, s. 1; 1937, c. 189, s. 1.)

Editor's Note.—The 1937 amendment included within the provisions of this and the following section inmates who have been "admitted under suspended sentence." Apparently, there was a loophole in the old law. 15 N. C. Law Rev., No. 4, p. 341.

§ 4409(2). **Harboring fugitives.**—It shall be unlawful for any person to harbor, conceal, or give succor to, any known fugitive from any institution whose inmates are committed by court or are admitted under suspended sentence. (1935, c. 307, s. 2; 1937, c. 189, s. 2.)

See note under § 4409(1).

SUBCHAPTER X. OFFENSES AGAINST THE PUBLIC PEACE

Art. 32. Offenses against the Public Peace**§ 4410. Carrying concealed weapons.**

Warrant Must State Defendant Carried Weapon Off His Own Premises.—In prosecution for carrying a concealed weapon, the warrant is held fatally defective in failing to embrace in the charge the essential element of the offense that the weapon was carried concealed by defendant off his own premises, the warrant itself excluding the charge that the weapon was carried off the premises by charging that defendant carried an unconcealed weapon off his premises. *State v. Bradley*, 210 N. C. 290, 186 S. E. 240.

SUBCHAPTER XII. GENERAL POLICE REGULATIONS

Art. 34. Lotteries and Gaming**§ 4428. Dealing in lotteries.**—

Any person who engages in disposing of any species of property whatsoever, including money and evidences of debt, or in any manner distributes

gifts or prizes upon tickets, bottle crowns, bottle caps, seals on containers, other devices or certificates sold for that purpose, shall be held liable to prosecution under this section.

(1937, c. 157.)

Editor's Note.—The 1937 amendment inserted the words "bottle crowns, bottle caps, seals on containers, other devices" in the second sentence of this section. The rest of the section, not being affected by the amendment, is not set out.

Applied in *State v. Blanton*, 207 N. C. 872, 180 S. E. 81.

§ 4433. Keeping gaming tables, illegal punch boards or slot machines, or betting thereat.

Cited in *State v. Humphries*, 210 N. C. 406, 186 S. E. 473.

§ 4434. Allowing gaming tables, illegal punch boards or slot machines on premises.

Where the agreed statement of facts in an action to recover the penalty under this section states that defendant kept a slot machine in his store, without a finding that the machine was illegal, the findings are insufficient to support a judgment against defendant. *Nivens v. Justice*, 210 N. C. 349, 186 S. E. 237.

§ 4437(d). Slot machines or devices prohibited.

Sections Construed Together.—Chapter 37, P. L. 1935, §§ 4437(d)-4437(i), and Chapter 282, P. L. 1935, §§ 4437(j)-4437(q), both dealing with slot machines, must be construed together. *State v. Humphries*, 210 N. C. 406, 186 S. E. 473.

Slot Machines Paying Off Only in Checks to Be Used in Machines Are Unlawful.—See *Tomberlin v. Bachtel*, 211 N. C. 265, 268, 189 S. E. 769.

§ 4437(f). Slot machine or device defined.

See the note to § 4437(l).

§ 4437(g). No tax to be levied on prohibited machines.

The payment of state and county license tax on slot machines does not justify the operation of the machines if they are illegal under the provision of this and ch. 282. *Hinkle v. Scott*, 211 N. C. 680, 191 S. E. 512.

§ 4437(j). Slot machines or devices prohibited.

This and the following sections cannot be held to repeal §§ 4437(d)-4437(i), because the two acts are not in conflict. Both evince the same purpose to remedy the same evil. *State v. Humphries*, 210 N. C. 406, 413, 186 S. E. 473.

The addition of the word "except" in the last line of this section, standing alone, apparently would make every sort of slot machine unlawful except that defined in § 4437(l) but the language of this last section undertakes to define what sort of slot machine or device is "prohibited by the provisions of this act," thus showing the legislative intent to make the possession of the described machine unlawful. Construing these sections together, we conclude, from the later inclusion of such machine in the prohibition, that the word "except" was not intended to exclude from unlawfulness the machine defined. This construction is consistent with the apparent purpose of the statute. *Id.*

§ 4437(l). Slot machine or device defined.

Editor's Note.—This section, standing alone is ungrammatical. It cannot be parsed. The predicate "may receive" in line 15 has no subject. But by reference to § 4437(f), it is seen that the word "user" is the subject of the verb "may receive," and that this word was by error of the draftsman or the printer inadvertently omitted. It is the duty of the court to supply such an omission and to interpolate words manifestly omitted by clerical error. With the word "user" or "operator" inserted, the section has grammatical form and intelligible meaning to carry out the legislative intent. See *State v. Humphries*, 210 N. C. 406, 410, 186 S. E. 473.

The purpose of this section is manifest. The General Assembly under its police power, undertook to prohibit the possession and operation of certain slot machines which it declared were public nuisances. *State v. Humphries*, 210 N. C. 406, 409, 186 S. E. 473.

The language previous to the word "irrespective" defines what constitutes an unlawful slot machine, and this definition must abide, irrespective of whether the machine may

also, leaving out of consideration any element of chance or uncertainty of outcome or the question whether the outcome is not dependent on skill, sell merchandise or present entertainment. That is, if the machine is rendered unlawful by reason of the fact that the element of chance is present, and that from its operation the result is unpredictable, its unlawfulness is not to be affected by the further fact that the machine may also sell merchandise, or present entertainment, disconnected from such element of chance or where the outcome is not dependent on skill. *State v. Humphries*, 210 N. C. 406, 411, 186 S. E. 473.

Evidence Properly Excluded.—In a prosecution under this section for possession of an illegal slot machine, evidence as to the licensing of the machine is properly excluded. *State v. Humphries*, 210 N. C. 406, 186 S. E. 473.

§ 4437(m). Minors barred from playing.

Cited in *State v. Humphries*, 210 N. C. 406, 186 S. E. 473.

§ 4437(r). Manufacture, sale, etc., of slot machines and devices.—It shall be unlawful to manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or to permit the operation of, or for any person to permit to be placed, maintained, used or kept in any room, space or building owned, leased or occupied by him or under his management or control, any slot machine or device. (1937, c. 196, s. 1.)

Editor's Note.—Despite the broad interpretation given the 1935 laws [§§ 4437(d)-4437(q)] in prohibiting slot machines, the 1937 legislature enacted ch. 196 which probably goes further in placing slot machines and similar devices beyond the pale of the law than any statute heretofore. 15 N. C. Law Rev., No. 4, p. 340.

§ 4437(s). Agreements with reference to slot machines or devices made unlawful.—It shall be unlawful to make or permit to be made with any person any agreement with reference to any slot machines or device, pursuant to which the user thereof may become entitled to receive any money, credit, allowance, or anything of value or additional chance or right to use such machines or devices, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value. (1937, c. 196, s. 2.)

§ 4437(t). Slot machine or device defined.—Any machine, apparatus or device is a slot machine or device within the provisions of this law if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the insertion of any piece of money or coin or other object, such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or in the playing of which the operator or user has a chance to make varying scores or tallies upon the outcome of which wagers might be made, irrespective of whether it may, apart from any element of chance or unpredictable outcome of such operation, also sell, deliver or present some merchandise, indication or weight, entertainment or other thing of value. This definition is intended to embrace all slot machines and

similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for money, credit, allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies. (1937, c. 196, s. 3.)

§ 4437(u). Issuance of license prohibited.—There shall be no state, county, or municipal tax levied for the privilege of operating the machines or devices the operation of which is prohibited by this law. (1937, c. 196, s. 4.)

§ 4437(v). Declared a public nuisance.—An article or apparatus maintained or kept in violation of this law is a public nuisance. (1937, c. 196, s. 5.)

§ 4437(w). Violation made misdemeanor.—Any person who violates any provision of this law is guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1937, c. 196, s. 6.)

Art. 36. Protection of the Family

§ 4447. Abandonment of family by husband.

This section in express terms constitutes the abandonment of children by the father a continuing offense. The prosecution of an offense of this nature is a bar to a subsequent prosecution for the same offense charged to have been committed at any time before the institution of the first prosecution, but it is not a bar to a subsequent prosecution for continuing the offense thereafter, as this is a new violation of the law. *State v. Hinson*, 209 N. C. 187, 190, 183 S. E. 397.

Sufficient Evidence to Show Willful Abandonment and Failure to Support Minor Child.—Evidence that defendant refused to support his minor child although repeated demands were made on him after the parties had returned to this State, is held to show that the offense of willful abandonment and failure to support said minor child was committed by the defendant in this State, since this section provides that the abandonment by the father of a minor child shall constitute a continuing offense. *State v. Hinson*, 209 N. C. 187, 183 S. E. 397.

§ 4449. Order to support from husband's property or earnings.

Judgment Entered without Notice after Default in Payment Is Void.—In *State v. Brooks*, 211 N. C. 702, 703, 191 S. E. 749, an order was entered requiring the defendant to pay into the clerk's office for the support and maintenance of his children certain monthly stipulated amounts, after indictment under § 4447. Default having been made in said payments, judgment was entered upon the defendant's original plea without his knowledge or presence, and the defendant was sentenced to two years on the road. It was held that the judgment was void because entered without the knowledge or presence of the accused.

Art. 38. Public Drunkenness

§ 4458. Local: Public drunkenness.—

1. By a fine of not more than fifty dollars, or by imprisonment for not more than thirty days, in the counties of Alamance, Ashe, Avery, Brunswick, Catawba, Cherokee, Clay, Cleveland, Dare, Davie, Duplin, Franklin, Gaston, Graham, Greene, Haywood, Henderson, Hyde, Jackson, Johnston, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Moore, Northampton, Orange, Pitt, Richmond, Rutherford, Scotland, Stanly, Union, Vance, Warren, Washington, Wilkes and Yadkin, in the townships of Fruitville and Poplar branch in Currituck county, and at Pungo in Beaufort county. (1907, cc. 305, 785, 900; 1908, c. 113; 1909, c. 815; P. L. 1915, c. 790; P. L. 1917, cc. 447, 475; P. L. 1919, cc. 148, 200; 1935, cc. 49, 208; 1937, cc. 46, 96, 286, 329, 443.)

13. In Guilford and Surry counties, by a fine, for the first offense, of not more than fifty dollars, or imprisonment for not more than thirty days; for the second offense within a period of twelve months by a fine of not more than one hundred dollars, or imprisonment for not more than sixty days; and for the third offense within any twelve months' period, such third offense to be declared a misdemeanor, punishable as a misdemeanor, within the discretion of the court. (1935, c. 207; 1937, c. 203.)

15. In Edgecombe county, by a fine, for the first offense, of not more than fifty dollars (\$50.00), or imprisonment for not more than thirty days; for the second offense within a period of twelve months, by a fine of not more than one hundred dollars (\$100.00), or imprisonment for not more than sixty days; and for the third offense within any twelve months' period such offense is declared a misdemeanor, punishable as a misdemeanor within the discretion of the court. (1937, c. 95.)

Editor's Note.—The 1937 amendments made subsection 13 applicable to Surry county, and added subsection 15. The amendments also inserted several counties in the list in subsection 1 as follows: C. 46, Duplin; c. 96, Johnston; c. 286, Avery, Davie, Mitchell, Wilkes and Yadkin; c. 329, Alamance; c. 443, Brunswick. Public Laws 1937, c. 68, repealed subsection 14 relating to Iredell county. The rest of the section, not being affected by the amendment, is not set out here.

Art. 41. Regulation of Employer and Employee

§ 4476. Witness required to give self-incriminating evidence; no suit or prosecution to be founded thereon.

For an article discussing the limits to self-incrimination, see 15 N. C. Law Rev., No. 3, p. 229.

Art. 47. Miscellaneous Police Regulations

§ 4506. Operating automobile while intoxicated.

Operation of Vehicle Imports Motion.—In a prosecution under this section defendant testified that he was not driving the truck, but that the driver got out to examine the motor when the truck stalled, and that defendant placed his foot on the brake to keep the truck from rolling backward. The court charged the jury to the effect that holding his foot on the brake to keep the truck from rolling backward was an operation of the truck within the meaning of the statute. Held: The operation of a motor vehicle within the meaning of the statute imports motion of the vehicle, and does not include the acts of defendant as testified to by him. *State v. Hatcher*, 210 N. C. 55, 185 S. E. 435.

Cited in *State v. McKnight*, 210 N. C. 57, 185 S. E. 437.

§ 4511(g). Placing trash, refuse, etc., within five hundred yards of hard-surfaced highway.—

Provided however, this section shall not apply to the counties of Alleghany, Ashe, Avery, Brunswick, Columbus, Davidson, Duplin, Forsyth, Franklin, Granville, Halifax, Lincoln, Madison, Mitchell, Montgomery, Moore, Person, Richmond, Rockingham, Scotland, Stanly, Stokes, Surry, Swain, Vance, Watauga, Warren, Wilson and Yancey, Macon, Jackson, Gates, Lenoir, Bertie, Cabarrus, Buncombe, Transylvania, Martin, Caswell, Rowan, Guilford, and Hyde. (1935, c. 457; 1937, c. 446.)

Editor's Note.—The 1937 amendment struck out "Anson" from the list of counties appearing in the proviso of this section. The rest of the section, not being affected by the amendment, is not set out here.

§ 4511(h). Tattooing prohibited. — It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under age of twenty-one years of age. Any one violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1937, c. 112, ss. 1, 2.)

CHAPTER 83 CRIMINAL PROCEDURE

Art. 1. General Provisions

§ 4516. Fees allowed counsel assigned to defend in capital case. — Whenever an attorney is appointed by the judge to defend a person charged with a capital crime, he shall receive such fee for performing this service as the judge may allow; but the judge shall not allow any fee until he is satisfied that the defendant charged with the capital crime is not able to employ counsel. The fees so allowed by the judge shall be paid by the county in which the indictment was found. (1917, c. 247; 1937, c. 226.)

Editor's Note.—Prior to the 1937 amendment the fee allowed was not to exceed twenty-five dollars.

Art. 2. Warrants

§ 4524. Warrant issued; contents.

For article discussing requisites of warrant, see 15 N. C. Law Rev., No. 2, p. 101.

Art. 3. Search Warrants

§ 4530(1). Warrant issued without affidavit and examination of complainant or other person; evidence discovered thereunder incompetent. — Any officer who shall sign and issue or cause to be signed and issued a search warrant without first requiring the complainant or other person to sign an affidavit under oath and examining said person or complainant in regard thereto shall be guilty of a misdemeanor; and no facts discovered by reason of the issuance of such illegal search warrant shall be competent as evidence in the trial of any action. (1937, c. 339, s. 1½.)

Editor's Note.—The caption of the act from which this section was codified, relates only to the requirement that all peace officers give bond. See § 323(b).

This section makes one important change in criminal procedure. Unlike the federal and the majority of state jurisdictions, North Carolina has always admitted evidence obtained by an illegal search. The new law provides that evidence obtained by a search made pursuant to an ille-

gally issued search warrant cannot be admitted in evidence. This leaves open the question whether evidence obtained by an illegal search made without any search warrant would be admissible. 15 N. C. Law Rev., No. 4, p. 343.

Art. 5. Arrest

§ 4542. Persons present may arrest for breach of peace.

For an article on the law of arrest in North Carolina, see 15 N. C. Law Rev., No. 2, p. 101.

§ 4543. Arrest for felony, without warrant.

Right of Private Person to Arrest.—

In *State v. Stancill*, 128 N. C. 606, 609, 38 S. E. 926, 928, the court says: "A private citizen has the right to arrest a felon, whether he is present when the felony is committed or not. When he is not present, it devolves on him to show that the felony, for which he arrested, had been committed." 15 N. C. Law Rev., No. 2, p. 103.

§ 4544. When officer may arrest without warrant.

For a discussion of arrest without warrant, see 15 N. C. Law Rev., No. 2, p. 101.

Admissible Evidence in Action for Unlawful Arrest.—An officer may make an arrest without a warrant when he acts in good faith and has reasonable grounds to believe that a felony has been committed, and that a particular person is guilty thereof and might escape unless arrested, and in an action against an officer for malicious and unlawful arrest, evidence that a robbery had been committed is held competent upon the issue, and defendant's evidence tending to show good faith and that he was acting within the provisions of the statute in arresting plaintiffs was properly submitted to the jury. *Hicks v. Nivens*, 210 N. C. 44, 185 S. E. 469.

§ 4546. When officer may break and enter houses.

Where an officer comes armed with process founded on a breach of the peace, he may, after demand of admittance for the purpose of making the arrest, and refusal of the occupant to open the doors of a house, lawfully break them in order to effect an entrance and if he act in good faith in doing so, both he and his posse comitatus will be protected. 15 N. C. Law Rev., No. 2, p. 125, citing *State v. Mooring*, 115 N. C. 709, 20 S. E. 182.

§ 4547. Persons summoned to assist in arrest.

Policeman Given Same Authority as Sheriff within Town Limits.—A policeman has the authority under general statute to depute a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. *Tomlinson v. Norwood*, 208 N. C. 716, 182 S. E. 659.

§ 4548. Procedure on arrest without warrant.

Custody of Prisoner.—If offender is arrested at a time and under such circumstances as he cannot be carried immediately before a justice, the officer may keep him in custody, commit him to jail or the lock-up, or even tie him, according to the nature of the offence and the necessity of the case. 15 N. C. Law Rev., No. 2, p. 127, citing *State v. Freeman*, 86 N. C. 683.

§ 4548(a). Arresting officer to inform offender of charge, allow bail except in capital cases, and permit communication with counsel or friends. — Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this state, with or without warrant, it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him, and it shall further be the duty of the officer making said arrest, except in capital cases, to have bail fixed in a reasonable sum, and the person so arrested shall be permitted to give bail bond; and it shall be the duty of the officer making the arrest to permit the person so arrested to communicate with counsel and friends immediately, and

the right of such persons to communicate with counsel and friends shall not be denied.

Any officer who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1937, c. 257, ss. 1, 2.)

Art. 6. Fugitives from Justice

§ 4550. Fugitives from another state arrested.

For a discussion of this and pertinent sections in connection with the law of arrest in this state, see 15 N. C. Law Rev., No. 2, p. 101.

Art. 6A. Extradition

§§ 4556(a)-4556(y): Repealed by Public Laws 1937, c. 273, s. 29.

The repealing act is codified as § 4556(1) et seq.

§ 4556(1). Definitions. — Where appearing in this article the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America. (1937, c. 273, s. 1.)

Editor's Note.—The repealed extradition law, Public Laws 1931, c. 124, formerly codified as §§ 4556(a)-4556(y), seemed to provide for extradition proceedings only when the crime with which the accused was charged was punishable in the state where committed—by death or imprisonment for more than one year in the state's prison, or where the crime consisted of abandonment of wife or children. However, the supreme court indicated in the case of *In re Hubbard*, 201 N. C. 472, 160 S. E. 569, 81 A. L. R. 547, that a person could be extradited for any crime. The new extradition law is in accord with *In re Hubbard*, specifically providing for the extradition of a person accused of any crime, whether felony or misdemeanor. Furthermore, provision is made for return to a demanding state of a person who intentionally commits an act outside of the demanding state resulting in a crime in the demanding state. At last the extradition laws cover a situation such as existed in *State v. Hall*, 115 N. C. 811, 20 S. E. 729, 44 Am. St. Rep. 501, 28 L. R. A. 289, where a man standing in North Carolina shot and killed a man in Tennessee, and North Carolina refused to return the murderer because he had never been in Tennessee. In other respects the new extradition law is substantially the same as the 1931 law. 15 N. C. Law Rev., No. 4, pp. 343, 344.

§ 4556(2). Duty of governor as to fugitives from justice of other states.—Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state. (1937, c. 273, s. 2.)

§ 4556(3). Form of demand for extradition. — No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 4556(6), that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affida-

vit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. (1937, c. 273, s. 3.)

§ 4556(4). Governor may cause investigation to be made.—When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. (1937, c. 273, s. 4.)

§ 4556(5). Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.—When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 4556(23) with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. (1937, c. 273, s. 5.)

§ 4556(6). Extradition of persons not present in demanding state at time of commission of crime.—The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 4556(3) with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. (1937, c. 273, s. 6.)

§ 4556(7). Issue of governor's warrant of arrest; its recitals.—If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the

state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. (1937, c. 273, s. 7.)

§ 4556(8). Manner and place of execution of warrant.—Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this article to the duly authorized agent of the demanding state. (1937, c. 273, s. 8.)

§ 4556(9). Authority of arresting officer.—Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. (1937, c. 273, s. 9.)

§ 4556(10). Rights of accused person; application for writ of habeas corpus.—No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. (1937, c. 273, s. 10.)

§ 4556(11). Penalty for non-compliance with preceding section.—Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars (\$1,000.00) or be imprisoned not more than six months, or both. (1937, c. 273, s. 11.)

§ 4556(12). Confinement in jail when necessary.—The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to

whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. (1937, c. 273, s. 12.)

§ 4556(13). Arrest prior to requisition.—Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under section 4556(6) with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state, and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 4556(6), has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. (1937, c. 273, s. 13.)

§ 4556(14). Arrest without a warrant.—The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant. (1937, c. 273, s. 14.)

§ 4556(15). Commitment to await requisition.—If from the examination before the judge or mag-

istrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 4556(6), that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged. (1937, c. 273, s. 15.)

§ 4556(16). Bail in certain cases; conditions of bond.—Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state. (1937, c. 273, s. 16.)

§ 4556(17). Extension of time of commitment; adjournment.—If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in section 4556(16), but within a period not to exceed sixty days after the date of such new bond. (1937, c. 273, s. 17.)

§ 4556(18). Forfeiture of bail.—If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. (1937, c. 273, s. 18.)

§ 4556(19). Persons under criminal prosecution in this state at time of requisition.—If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. (1937, c. 273, s. 19.)

§ 4556(20). Guilt or innocence of accused, when inquired into.—The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime. (1937, c. 273, s. 20.)

§ 4556(21). Governor may recall warrant or issue alias.—The governor may recall his warrant

of arrest or may issue another warrant whenever he deems proper. (1937, c. 273, s. 21.)

§ 4556(22). Fugitives from this state; duty of governors.—Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed. (1937, c. 273, s. 22.)

§ 4556(23). Application for issuance of requisition; by whom made; contents.—I. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state

to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. (1937, c. 273, s. 23.)

§ 4556(24). Costs and expenses.—When the crime shall be a felony, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the actual traveling and subsistence costs of the agent of the demanding state, together with such legal fees as were paid to the officers of the state on whose governor the requisition is made. In every case the officer entitled to these expenses shall itemize the same and verify them by his oath for presentation, either to the governor of the state, in proper cases, or to the board of county commissioners, in cases in which the county pays such expenses. (1937, c. 273, s. 24.)

§ 4556(25). Immunity from service of process in certain civil actions.—A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned until he has been convicted in the criminal proceeding or, if acquitted until he has had reasonable opportunity to return to the state from which he was extradited. (1937, c. 273, s. 25.)

§ 4556(26). Written waiver of extradition proceedings.—Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 4556(7) and 4556(8) and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state: Provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 4556(10).

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. (1937, c. 273, s. 25a.)

§ 4556(27). Non-waiver by this state.—Nothing in this article contained shall be deemed to consti-

tute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this article which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. (1937, c. 273, s. 25b.)

§ 4556(28). No right of asylum; no immunity from other criminal prosecution while in this state.—After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. (1937, c. 273, § 26.)

§ 4556(29). Interpretation.—The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. (1937, c. 273, s. 27.)

§ 4556(30). Short title.—This article may be cited as the Uniform Criminal Extradition Act. (1937, c. 273, s. 30.)

Art. 7. Preliminary Examination

§ 4571. Witnesses in lynching not privileged.

For a general discussion of the limits to self-incrimination, see 15 N. C. Law Rev., No. 3, p. 229.

Art. 8. Bail

§ 4574. Officers authorized to take bail, before imprisonment.

As to authority of arresting officer to allow bail, see § 4548(a).

Art. 11. Venue

§ 4605. In county where death occurs.

The first "of" in the fourth line of this section in the original should read "or."

§ 4606. Improper venue met by plea in abatement; procedure.

Where Motion to Quash Indictment Was Correctly Denied.—Defendant moved to quash the indictment for receiving stolen goods on the ground that the evidence showed that the property, if stolen, was stolen in another county, and, if received by defendant, was received by him in a third county. It was held that the motion to quash was correctly denied since, under this section, the crime is presumed to have been committed in the county laid in the bill of indictment unless defendant aptly enters a plea in abatement. *State v. Ray*, 209 N. C. 772, 184 S. E. 836.

Art. 13. Indictment

§ 4613. Bill of particulars.

Where Motion in Arrest of Judgment Properly Denied.—An indictment charging defendant disjunctively with murder committed with malice, premeditation, and deliberation and with murder committed in the perpetration of a robbery, is not void for uncertainty, since either charge constitutes murder in the first degree, and defendant's remedy, if he desires more specific information is by motion for a bill of particulars under this section, but a motion in arrest of judgment after a verdict of guilty of murder in the first degree, is properly denied. *State v. Puckett*, 211 N. C. 66, 189 S. E. 183.

§ 4614. Essentials of bill for homicide.

This section is an abbreviated form for a bill of indictment for murder. *State v. Puckett*, 211 N. C. 66, 73, 189 S. E. 183.

Indictment under Section Held to Give Full Information of Crime.—Where an indictment was drawn according to this section the defendant was given full information of the crime on which he was being tried. There was nothing indefinite or uncertain about the bill of indictment. It was in the alternative, but this was merely two counts in one bill of indictment. *State v. Puckett*, 211 N. C. 66, 73, 189 S. E. 183.

Applied in *State v. Kirkman*, 208 N. C. 719, 182 S. E. 498; *State v. Dills*, 210 N. C. 178, 185 S. E. 677.

Cited in *State v. Thornton*, 211 N. C. 413, 190 S. E. 758; *State v. Godwin*, 211 N. C. 419, 190 S. E. 761.

§ 4615. Form of bill for perjury.

Applied in *State v. Rhinehart*, 209 N. C. 150, 183 S. E. 388.

§ 4622. Separate counts; consolidation.

Reckless Driving and Passing Standing School Bus.—Indictments charging defendant with reckless driving and with passing a standing school bus on the highway may be consolidated for trial as provided in this section. *State v. Webb*, 210 N. C. 350, 186 S. E. 241.

It is permissible to join counts charging conspiracy and successive steps thereafter taken by the respective conspirators in executing the common design. *State v. Anderson*, 208 N. C. 771, 182 S. E. 643.

Consolidation Is within Discretionary Power of Trial Court.—Defendant was tried separately in municipal court on two warrants, each charging assault with a deadly weapon, but upon different persons on separate occasions about fifteen days apart. On appeal to the Superior Court, the court, upon motion of the solicitor, consolidated the cases for trial. Under the provisions of this section, the order of consolidation was within the discretionary power of the trial court. *State v. Waters*, 208 N. C. 769, 182 S. E. 483. See also, *State v. McLean*, 209 N. C. 38, 182 S. E. 700, wherein indictments charging embezzlement were consolidated.

Applied in *State v. Lancaster*, 210 N. C. 584, 187 S. E. 802.

§ 4623. Bill or warrant not quashed for informality.

I. NATURE AND PURPOSE.

Purpose of Section.—The whole purpose of the law is to administer justice and that law and order and orderly government may at all times be maintained. *State v. Walls*, 211 N. C. 487, 498, 191 S. E. 232.

II. GENERAL EFFECT.

Liberal Construction.

Under this section bills and warrants are no longer subject to quashal "by reason of any informality or refinement." *State v. Anderson*, 208 N. C. 771, 782, 182 S. E. 643.

Does Not Supply Essential Averments.

In accord with original. See *State v. Tarlton*, 208 N. C. 734, 736, 182 S. E. 481.

Prisoner Is Held Although Indictment Is Defective.—Where the indictment should have been quashed because defective in form the prisoner could still be held for a proper bill under this section. *State v. Callett*, 211 N. C. 563, 564, 191 S. E. 27.

Cited in *State v. Puckett*, 211 N. C. 66, 189 S. E. 183.

III. DEFECTS CURED.

B. Omissions and Mistakes.

Failure to Repeat Names in Charging Scienter.—Where defendants contended that a count in the indictment charging receiving stolen goods was fatally defective in that the names of defendants were not repeated in charging scienter, it was held that the defect was merely an informality or refinement not sufficient to support a quashal of the indictment, the charge being plain, explicit and sufficient to enable the court to proceed to judgment. *State v. Whitley*, 208 N. C. 661, 182 S. E. 338.

§ 4625. Defects which do not vitiate.

In General.

The modern tendency is against technical objections which do not affect the merits of the case. Hence judgments are not to be stayed or reversed for nonessential or minor defects. *State v. Anderson*, 208 N. C. 771, 782, 182 S. E. 643.

A charge in a murder prosecution in the alternative was not a vitiating defect, and the motion in arrest after verdict was properly denied, such motion being available only for vitiating defects upon the record proper. *State v. Puckett*, 211 N. C. 66, 189 S. E. 183.

Art. 15. Trial in Superior Court

§ 4632. Prisoner standing mute, plea "not guilty" entered.

Deaf Mutes.

In *State v. Early*, 211 N. C. 189, 189 S. E. 668, the court, upon finding that defendant was a deaf mute, subpoenaed an interpreter, who after being duly sworn and after the reading of the indictment, interpreted and explained the indictment to defendant. After defendant had indicated to the interpreter that he understood the indictment, the interpreter translated the solicitor's question of whether defendant was guilty or not guilty, and upon a negative reply given through the interpreter, a plea of not guilty was entered. It was held that there was no error on the arraignment of defendant or in the acceptance of his negative answer as a plea of not guilty.

§ 4636(a). Waiving jury trial; pleas; demurrer to evidence.

The constitutional right to trial by jury in the Superior Court, art. I, § 13, may not be waived by the accused after a plea of not guilty, nor may the General Assembly permit this to be done by statute, hence this section is unconstitutional in that it provides, in effect, for trial by the court as upon a plea of "not guilty," when a defendant enters a "conditional plea" and a judgment entered upon a trial under this section will be stricken out upon appeal and the cause remanded for trial according to law. *State v. Camby*, 209 N. C. 50, 182 S. E. 715, followed in *State v. Crump*, 209 N. C. 52, 182 S. E. 716. See also, *State v. Hill*, 209 N. C. 53, 182 S. E. 716.

Upon defendant's appeal from judgment and sentence by the court after defendant had entered a conditional plea of guilty under this section, the case will be remanded in order that a jury may pass upon defendant's guilt or innocence in accordance with defendant's constitutional right. *State v. Ellis*, 210 N. C. 170, 185 S. E. 662.

§ 4640. Conviction for a less degree or an attempt.

Application of Section.—Where there are several counts in a bill, if the jury find the defendant guilty on one count and say nothing in their verdict concerning the other counts, it will be equivalent to a verdict of not guilty as to them. This principle should not be confused with the practice, authorized by this section, which permits the conviction of a "lesser degree of the same crime" when included in a single count. *State v. Hampton*, 210 N. C. 283, 284, 186 S. E. 251.

§ 4642. Verdict for murder in first or second degree.

Quoted in *State v. Puckett*, 211 N. C. 66, 189 S. E. 183.

Cited in *State v. Thornton*, 211 N. C. 413, 190 S. E. 758; *State v. Godwin*, 211 N. C. 419, 190 S. E. 761.

§ 4643. Demurrer to the evidence.

On motion to nonsuit, the court is required merely to ascertain whether there is any competent evidence to sustain the allegations of the indictment. *State v. Landin*, 209 N. C. 20, 182 S. E. 689.

Compared with Section 567.

In accord with original. See *State v. Ormond*, 211 N. C. 437, 191 S. E. 22.

Sufficiency of Evidence May Be Challenged if Motion Timely Made.

A motion for judgment of nonsuit, under this section, must be made at the close of the state's evidence in order for a motion thereunder made at the close of all the evidence to be considered. *State v. Ormond*, 211 N. C. 437, 439, 191 S. E. 22.

Sufficiency of Evidence.—In accord with first paragraph in original. See *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412. See also, *State v. Eubanks*, 209 N. C. 758, 763, 184 S. E. 839.

Where the evidence for the state where the defendants are charged with fornication and adultery, shows no more than that the defendants had opportunities to commit the crime, on motion of the defendants, the action should be dismissed, and a verdict of not guilty, entered under this section. *State v. Woodell*, 211 N. C. 635, 636, 191 S. E. 334.

The court said in *State v. Woodell*, 211 N. C. 635, 636, 191 S. E. 334, citing *State v. Prince*, 182 N. C. 788, 108 S. E. 330, that when it is said that there is no evidence to go to the jury, it does not mean that there is literally and absolutely none, for as to this there could be no

room for any controversy, but there is none which ought reasonably to satisfy the jury that the fact sought to be proved is established.

Motion will not lie for failure of the state to offer evidence of a nonessential averment in the indictment, when each essential element of the offense is supported by competent evidence. *State v. Atkinson*, 210 N. C. 661, 188 S. E. 73.

Demurrer to the Evidence Properly Sustained.—See *State v. Sims*, 208 N. C. 459, 460, 181 S. E. 269, wherein defendant's identity was not established; *State v. White*, 208 N. C. 537, 181 S. E. 558, wherein defendant's identity was not established; *State v. Landin*, 209 N. C. 20, 22, 182 S. E. 689, wherein defendant's negligence was held harmless; *State v. Creech*, 210 N. C. 700, 188 S. E. 316, wherein owner of car did not know driver was intoxicated.

Demurrer to the Evidence Properly Denied.—See *State v. Webber*, 210 N. C. 137, 185 S. E. 659, wherein evidence showed defendant was driving at fifty miles an hour before collision; *State v. Smith*, 211 N. C. 93, 189 S. E. 175, wherein evidence showed felonious intent to commit rape.

Applied in *State v. Callett*, 211 N. C. 563, 191 S. E. 27; *State v. McDonald*, 211 N. C. 672, 191 S. E. 733.

Cited in *State v. Anderson*, 208 N. C. 771, 182 S. E. 643; *State v. Jones*, 209 N. C. 49, 182 S. E. 699; *State v. Camby*, 209 N. C. 50, 182 S. E. 715; *State v. Langley*, 209 N. C. 178, 183 S. E. 526; *State v. Hinson*, 209 N. C. 187, 183 S. E. 397; *State v. Lewis*, 209 N. C. 191, 183 S. E. 357; *State v. Oakley*, 210 N. C. 206, 186 S. E. 244; *State v. Gallman*, 210 N. C. 288, 186 S. E. 236; *State v. Evans*, 211 N. C. 458, 190 S. E. 724.

Art. 16. Appeal

§ 4647. Appeal from justice, trial de novo.

See the note to § 1549 in this Supplement.

Cited in *State v. Boykin*, 211 N. C. 407, 191 S. E. 18.

§ 4648. Justice to return papers and findings to superior court.

See the note to § 1549 in this Supplement.

Cited in *State v. Boykin*, 211 N. C. 407, 191 S. E. 18.

§ 4649. When state may appeal.

Applied in *State v. Parker*, 209 N. C. 32, 182 S. E. 723.

§ 4650. Appeal by defendant to supreme court.

Appeal Lies Only from Final Judgment.—The right to appeal is wholly statutory, and a defendant may appeal only from a conviction or from some judgment that is final in its nature. Thus an appeal from the denial of defendant's plea in abatement will be dismissed as being an appeal from an interlocutory judgment. *State v. Blades*, 209 N. C. 56, 182 S. E. 714, wherein the court inadvertently cited § 460.

In the instant case, the defendant was not convicted under § 276(a); he was acquitted. There was no judgment on conviction, or judgment prejudicial to the defendant in its nature final. The defendant therefore had no right to appeal to the Supreme Court and it is without jurisdiction to entertain the appeal, or to decide the questions presented by defendant's assignment of error. *State v. Hiatt*, 211 N. C. 116, 117, 189 S. E. 124.

§ 4651. Defendant may appeal without security for costs.—

And where it shall appear to the presiding judge that a defendant who has been convicted of a capital felony, or having been tried upon a bill of indictment charging a capital felony, has been convicted of a less offense, and who has prayed an appeal to the supreme court from the sentence of death or other sentence pronounced against him upon such conviction is unable to defray the cost of perfecting his appeal on account of his poverty, it shall be the duty of the county in which the alleged capital felony was committed, upon the order of such judge, to pay the necessary cost of obtaining a transcript of the proceedings had and the evidence offered on the trial from the court reporter for the use of the defendant and the necessary cost of preparing the requisite copies of the record and briefs which the defendant is required to file in the supreme court under the rules of said court.

(1937, c. 330.)

Editor's Note.—As only the second sentence was affected

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by the 1937 amendment, the rest of the section is not set out here. The amendment extends the 1933 law to include defendants who have been tried on an indictment for a capital felony and convicted of a lesser offense. Again the statute would apply only in cases where counsel had been assigned by the court. 15 N. C. Law Rev., No. 4, p. 347.

The requirements of this section are mandatory and jurisdictional, "and unless the statute is complied with, the appeal is not in this Court, and we can take no cognizance of the case, except to dismiss it from our docket." *State v. Holland*, 211 N. C. 284, 285, 189 S. E. 761, citing *Honeycutt v. Watkins*, 151 N. C. 652, 65 S. E. 762.

And are not subject to indulgences or waiver. *State v. Holland*, 211 N. C. 284, 286, 189 S. E. 761.

There is no authority for granting an appeal in forma pauperis without a proper supporting affidavit. *State v. Holland*, 211 N. C. 284, 285, 189 S. E. 761.

Failure to Prosecute According to Rules of Court.—

In accord with original. See *State v. Holland*, 211 N. C. 284, 189 S. E. 761, where it was held that the affidavit not containing the assertion that "the application is in good faith," prevented the court having jurisdiction.

§ 4654. Appeal not to vacate judgment; stay of execution.

Effect of Failure to Serve Statement of Case within Time Fixed.—Where defendants fail to make out and serve their statement of case on appeal within the time fixed, they lose their right to prosecute the appeal, and the motion of the attorney-general to docket and dismiss will be allowed, but where defendants have been convicted of a capital felony, this will be done only after an inspection of the record for errors appearing upon its face. *State v. Allen*, 208 N. C. 672, 182 S. E. 140. See also, *State v. McLeod*, 209 N. C. 54, 182 S. E. 713.

Art. 17. Execution

§ 4657. Death by administration of lethal gas.

This section applies only to crimes committed after the effective date of the statute, 1 July, 1935, and it will not support a sentence of death by lethal gas imposed for a capital crime committed prior to the effective date of the statute although defendant was tried and convicted after the effective date thereof. *State v. Hester*, 209 N. C. 99, 182 S. E. 738. See also, *State v. Dingle*, 209 N. C. 293, 183 S. E. 376; *State v. McNeill*, 211 N. C. 286, 287, 189 S. E. 872.

Cited in *State v. Horne*, 209 N. C. 725, 184 S. E. 470.

Art. 18. Suspension of Sentence and Probation

§ 4665(1). Suspension of sentence and probation.—After conviction or plea of guilty or nolo contendere for any offense, except a crime punishable by death or life imprisonment, the judge of any court of record with criminal jurisdiction may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. (1937, c. 132, s. 1.)

For a discussion of the act from which this article was codified, see 15 N. C. Law Rev., No. 4, p. 345.

§ 4665(2). Investigation by probation officer.—When directed by the court the probation officer shall fully investigate and report to the court in writing the circumstances of the offense and the criminal record, social history, and present condition of the defendant, including, whenever practicable, the findings of a physical and mental examination of the defendant. When the services of a probation officer are available to the court, no defendant charged with a felony, and, unless the court shall direct otherwise in individual cases, no other defendant shall be placed on probation or released under suspension of sentence until the report of such investigation shall have been presented to and considered by the court. (1937, c. 132, s. 2.)

§ 4665(3). Conditions of probation.—The court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them

the following, or any other: That the probationer shall:

- (a) Avoid injurious or vicious habits;
- (b) Avoid persons or places of disreputable or harmful character;
- (c) Report to the probation officer as directed;
- (d) Permit the probation officer to visit at his home or elsewhere;
- (e) Work faithfully at suitable employment as far as possible;
- (f) Remain within a specified area;
- (g) Pay a fine in one or several sums as directed by the court;
- (h) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense, in an amount to be determined by the court;
- (i) Support his dependents. (1937, c. 132, s. 3.)

§ 4665(4). Termination of probation, arrest, subsequent disposition.—The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit. Upon the satisfactory fulfillment of the conditions of probation or suspension of sentence the court shall by order duly entered discharge the defendant. At any time during the period of probation or suspension of sentence, the court may issue a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer, or other officer with power of arrest, upon the request of the probation officer, may arrest a probationer without a warrant. In case of an arrest without a warrant the arresting officer shall have a written statement signed by said probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation; and said statement shall be sufficient warrant for the detention of said probationer in the county jail, or other appropriate place of detention, until said probationer shall be brought before the judge of the court. Such probation officer shall forthwith report such arrest and detention to the judge of the court, and submit in writing a report showing in what manner the probationer has violated probation. Upon such arrest, with or without warrant, the court shall cause the defendant to be brought before it and may revoke the probation or suspension of sentence, and shall proceed to deal with the case as if there had been no probation or suspension of sentence. (1937, c. 132, s. 4.)

§ 4665(5). Establishment and organization of a state probation commission.—There is hereby established a state probation commission to be composed of five members, who shall be appointed by the governor and shall serve without a salary as members of such commission, but shall receive their actual traveling expenses while in the performance of their official duties. The first appointments shall be made within thirty days after this article shall take effect, and shall be made in such manner that the term of one member of the state probation commission shall expire each year. Their successors shall be appointed by the governor within thirty days thereafter for terms of five years each. All vacancies occurring among the members shall be filled as soon as practicable

thereafter by the governor for the unexpired terms. This commission shall be deemed a "commission for special purpose" within the meaning of the language of section seven of Article XIV of the Constitution, and the membership thereof may be composed of persons holding other official positions in the state, if the governor shall so elect.

The state probation commission shall organize immediately after the appointment of the first members thereof, and elect a chairman from its members. Thereafter a chairman shall be elected annually between January fifteenth and January thirtieth of each year. (1937, c. 132, s. 5.)

§ 4665(6). Duties and powers of the commission; meetings; appointment of director of probation; qualifications.—With respect to the administration of probation in the state, except cases within the jurisdiction of the juvenile courts, the state probation commission shall exercise general supervision; formulate policies; adopt general rules, not inconsistent with law, to regulate methods of procedure; and set standards for personnel. It shall meet at stated times to be fixed by it not less often than once every three months, and on call of its chairman, to consider any matters relating to probation in the state.

The state probation commission, with the approval of the governor, shall appoint a director of probation, who shall serve as its executive secretary, and shall receive a salary of not less than three thousand six hundred (\$3,600.00) dollars nor more than four thousand five hundred (\$4,500.00) dollars per annum and who shall give his entire time to the work. When the necessity of the service requires, it shall appoint one or more assistants and fix their salaries.

The person appointed as director of probation shall be qualified by education, training, experience and temperament for the duties of the office. (1937, c. 132, s. 6.)

§ 4665(7). Duties of the director of probation; appointment of probation officers; reports.—The director of probation shall appoint, subject to the approval of the state probation commission, such probation officers as are required for service in the state and such clerical assistance as may be necessary: Provided, that before any persons other than the director of probation shall be appointed, the state probation commission shall make up and submit to the governor a budget covering its proposed organization and expenditures, and no fund shall be available to carry out the purpose of this article except to the extent that said budget is approved first by the state highway and public works commission, and then by the director of the budget.

The director of probation shall direct the work of the probation officers appointed under this article. He shall consult and cooperate with the courts and institutions in the development of methods and procedure in the administration of probation, and shall arrange conference of probation officers and judges. He shall make an annual written report with statistical and other information to the probation commission and the governor. (1937, c. 132, s. 7.)

§ 4665(8). Assignment and compensation and oath of probation officers.—Probation officers appointed under this article shall be assigned to

serve in such courts or districts or otherwise as the director of probation may determine. They shall be paid annual salaries to be fixed by the probation commission, and shall also be paid traveling and other necessary expenses incurred in the performance of their official duties as probation officers when such expense accounts have been authorized and approved by the director of probation.

Each person appointed as a probation officer shall take an oath of office before the judge of the court or courts in which he is to serve, which oath shall be as follows:

"I,, do solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God,"

and shall be noted of record by the clerk of the court. (1937, c. 132, s. 8.)

§ 4665(9). Duties and powers of the probation officers.—A probation officer shall investigate all cases referred to him for investigation by the judges of the courts or by the director of probation, and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the director of probation may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court, or the director of probation, to aid and encourage persons on probation to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work; shall make such reports in writing to the director of probation as he may require; and shall perform such other duties as the director of probation may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this state. (1937, c. 132, s. 9.)

§ 4665(10). Co-operation with commissioner of parole and officials of local units.—It shall be the duty of the director of probation and the commissioner of parole to co-operate with each other to the end that the purposes of probation and parole may be more effectively carried out. When requested, each shall make available to the other case records in his possession, and in cases of emergency, where time and expense can be saved, shall provide investigation service.

It is hereby made the duty of every city, county, or state official or department to render all assistance and co-operation within his or its fundamental power which may further the objects of this article. The state probation commission, the

director of probation, and the probation officers are authorized to seek the co-operation of such officials and departments, and especially of the county superintendents of public welfare and of the state board of charities and public welfare. (1937, c. 132, s. 10.)

§ 4665(11). Records treated as privileged information.—All information and data obtained in the discharge of official duty by any probation officer shall be privileged information, shall not be receivable as evidence in any court, and shall not be disclosed directly or indirectly to any other than the judge or to others entitled under this article to receive reports, unless and until otherwise ordered by a judge of the court or the director of probation. (1937, c. 132, s. 11.)

§ 4665(12). Payment of salaries and expenses.—All salaries and expenses necessary for carrying out the provisions of this article shall be fixed in accordance with the Executive Budget Act and the Personnel Act, and shall be paid by the state highway and public works commission out of the state highway funds, under direction of the director of the budget. (1937, c. 132, s. 12.)

§ 4665(13). Accommodations for probation officers.—The county commissioners in each county in which a probation officer serves shall provide, in or near the courthouse, suitable office space for such officer. (1937, c. 132, s. 13.)

CHAPTER 84 AGRICULTURE

Art. 1. Department of Agriculture

Part 1. Board of Agriculture

§ 4667. Department of agriculture, immigration, and statistics established; board of agriculture, membership, terms of office, etc.—The department of agriculture, immigration, and statistics is created and established and shall be under the control of the commissioner of agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The board of agriculture shall consist of the commissioner of agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of ten other members from the state at large, so distributed as to reasonably represent the different sections and agriculture of the state. In the appointment of the members of the board the governor shall also take into consideration the different agricultural interests of the state, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the state, one who shall be a practical poultry man to represent the poultry interest of the state, one who shall be a practical peanut grower to represent the peanut interest, one who shall be a man experienced in marketing to represent the marketing of products of the state. The members of such board shall be appointed by the governor,

by and with the consent of the senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present board of agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged board of agriculture, the governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such board shall be filled by the governor for the unexpired term. The commissioner of agriculture and the members of the board of agriculture shall be practical farmers engaged in their profession. (1937, c. 174.)

Editor's Note.—The 1937 amendment struck out the former section and inserted the above in lieu thereof.

Part 2. Commissioner of Agriculture

§ 4677(a). To establish regulations for transportation of livestock.—The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 4. Powers and Duties of Department and Board

§ 4688(a): Repealed by Public Laws 1937, c. 131.

Art. 1A. North Carolina Fertilizer Law of 1933

§ 4689(3). Definitions.—

(i) The term "grade" means the minimum percentages of total nitrogen (N); phosphoric acid (P_2O_5) in available form (comprising the water and citrate soluble phosphoric acid) except as provided for in paragraph (e) of section 4689(4); and potash (K_2O) available in water. These are to be stated in this order and, when applied to mixed fertilizers, in whole numbers only.

(1937, c. 430, s. 1.)

Editor's Note.—The 1937 amendment substituted the word "available" for the word "soluble" formerly appearing in the sixth line of item (i). The rest of the section, not being affected by the amendment, is not set out here.

§ 4689(4). Registration.—(a) It shall be unlawful for any person, acting for himself, or as agent, to sell or offer for sale within the state any mixed fertilizer or fertilizer material that has not been registered as required by this section.

(b) Any person who may desire to sell or offer for sale, either by himself or through another person, mixed fertilizer or fertilizer material in this state shall first file with the commissioner on registration forms supplied by him a signed statement, giving the name and address of the applicant, and the following information with respect to each brand, grade or analysis, in the following order:

(1) Weight of each package in pounds.

(2) Brand name.

(3) Guaranteed analysis showing the minimum percentages of plant food in the following order:

A—In mixed fertilizers:

Total nitrogen, per cent (whole numbers only); water insoluble nitrogen, per cent; available phosphoric acid, per cent (whole numbers only); available potash, per cent (whole numbers only), whether the fertilizer is acid-forming or non-acid-forming. The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

B—In mixed fertilizers branded for tobacco:

Total nitrogen, per cent (whole numbers only); nitrogen in the form of nitrate, per cent; water insoluble nitrogen, per cent; available phosphoric acid, per cent (whole numbers only); available potash, per cent (whole numbers only), and the maximum percentage of chloride expressed as: Chlorine, per cent.

Whether the fertilizer is acid-forming or non-acid-forming. The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

C—In fertilizer materials:

Total nitrogen, per cent; nitrogen in the form of nitrate, per cent; available phosphoric acid, per cent; available potash, per cent.

(4) The name and address of the person guaranteeing the registration.

(5) The sources from which such nitrogen, phosphoric acid, and potash are derived.

(6) Whether or not the brand will be sold with an open formula.

(c) The grade of any brand of mixed fertilizer shall not be changed during the quinquennial period for which registration is made, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed, provided prompt notification of such change is given to the commissioner and the change is noted on the container.

(d) The person offering for sale or selling any brand of mixed fertilizer or fertilizer material shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(e) In the case of bone, tankage, and other organic materials in which the phosphoric acid content is not shown by laboratory methods to be available but eventually becomes available in the soil, the phosphoric acid may be guaranteed as total phosphoric acid. Unacidulated mineral phosphatic materials offered for sale shall be guaranteed as to both total and available phosphoric acid. In the case of basic slag, either the total or the available phosphoric acid shall be guaranteed. If the term "available phosphoric acid" be used in the statement of analyses, it shall mean the sum of water soluble and citrate soluble phosphoric acid, except that when applied to basic slag phosphates the term "available" shall mean that part of the phosphoric acid found available by the Wagner citric acid method as adopted by the association of official agricultural chemists.

(f) In no case, except in the case of unacidulated mineral phosphates, shall the term total

phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(g) All manufacturers, dealers or agents applying for such registration under this section shall pay to the commissioner of agriculture of the state of North Carolina the sum of five dollars for each separate registration registered with the said commissioner; further, that the quinquennial registration of brands of fertilizers, or fertilizer materials, shall become effective December first, one thousand nine hundred thirty-seven. It is further provided herein that the full registration fee of five dollars shall be levied on all brands of fertilizer, or fertilizer materials, offered for registration between the effective date and the expiration date of any quinquennial period. In no event shall two or more brands of the same brand name with different guaranteed analysis be included under a single registration by the same manufacturer, dealer or agent. (1933, c. 324, s. 4; 1937, c. 430, s. 2.)

Editor's Note.—The 1937 amendment so changed this section that a comparison here is not practical.

§ 4689(5). Marking.—

(l) If magnesium oxide (MgO) is claimed as an ingredient the minimum percentage of total magnesium oxide, and/or water soluble or available magnesium oxide shall be guaranteed in the case of tobacco fertilizers. In the case of other fertilizers the total magnesium oxide, if claimed, shall be guaranteed in minimum per cent. The guarantees of magnesium oxide shall be stated in whole numbers only. This guarantee shall appear either on the bag or container or on a suitable tag attached thereto.

(m) The maximum sulphur may be claimed as an ingredient of tobacco fertilizers and the minimum calcium oxide (CaO) may be claimed in all mixed fertilizers. If these claims are made they shall be guaranteed. The guarantee shall appear on the bag or container or on a suitable tag or label attached thereto and shall be stated in per cent in whole numbers only.

(n) Additional plant food, elements, compounds, or classes of compounds determinable by chemical control methods, may be guaranteed by permission of the commissioner and board of agriculture if approved by the director of the North Carolina experiment station: Provided, due public notice of the proposed action shall have been given. When any such additional plant food, elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. The commissioner shall also fix penalties for failure to fulfill such guarantees. (1933, c. 324, s. 5; 1937, c. 430, s. 3.)

Editor's Note.—The 1937 amendment added paragraphs (l), (m) and (n). The rest of the section, not being affected by the amendment, is not set out here.

§ 4689(11). Chemical analyses.—

(c) If the state chemist is required by law to make analyses or determinations for any ingredients before the association of official agricultural chemists shall have adopted an official, or tentative, method for such determination, then the state chemist shall prescribe a method of analysis to be used, and he shall send a copy of such method to every manufacturer, whose brands are registered

in the state, at least six months before such provisions of the law become effective. (1933, c. 324, s. 11; 1937, c. 430, s. 4.)

Editor's Note.—The 1937 amendment added paragraph (c). The rest of the section, not being affected by the amendment, is not set out here.

§ 4689(12). Plant food deficiency.—

(c) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five per cent (or one hundred pounds calcium carbonate equivalent per ton) from the guarantee, then a penalty of fifty cents per ton for each fifty pounds calcium carbonate, or fraction thereof in excess of the one hundred pounds allowed, shall be assessed and paid as under paragraph (a) of this section.

(d) Should the total magnesium oxide (MgO) content of any sample of fertilizer fall as much as one whole per cent below the guaranteed minimum, a penalty of fifty cents per ton for each additional one-fourth of one whole per cent, or fraction thereof, shall be assessed. Should the water soluble or available magnesium oxide (MgO) content of any sample of fertilizer fall as much as one-half whole per cent below the guaranteed minimum, a penalty of fifty cents per ton for each additional one-fourth of one whole per cent, or fraction thereof, shall be assessed. These penalties for total and water soluble or available magnesium oxide shall not be cumulative, but only the greater one shall be assessed and paid as under paragraph (a) of this section.

(e) Should the calcium oxide (CaO) content of any sample of fertilizer fall more than one whole per cent below the guaranteed minimum, a penalty of fifty cents per ton for each additional one-half whole unit, or fraction thereof, shall be assessed and paid as under paragraph (a) of this section.

(f) Should the sulphur content of any tobacco fertilizer exceed by more than one whole per cent the guaranteed maximum, a penalty of fifty cents per ton for each additional one-half whole per cent, or fraction thereof, shall be assessed and paid as under paragraph (a) of this section.

(g) Should the water insoluble nitrogen content of any sample of fertilizer fall more than twenty-five per cent below the guaranteed minimum, a penalty of twice the value of the deficiency shall be assessed. If it should fall as much as fifty per cent below the guaranteed minimum, a penalty of five times the value of the deficiency shall be assessed.

(h) Should the nitrate nitrogen content of any sample of mixed fertilizer fall more than twenty-five per cent below the guaranteed minimum, a penalty of fifty cents per ton shall be assessed. If it falls more than fifty per cent below the guaranteed minimum, a penalty of one dollar per ton shall be assessed.

(i) All penalties assessed under this section shall be paid to the purchaser or consumer of the lot of fertilizer represented by the sample analyzed. (1933, c. 324, s. 12; 1937, c. 430, s. 5.)

Editor's Note.—The 1937 amendment added paragraphs (c) to (i) inclusive. The rest of the section, not being affected by the amendment, is not set out.

§ 4689(15). Minimum plant food content.—(a)

No super-phosphate, no fertilizer with a guarantee of two plant food ingredients, or no complete

mixed fertilizer, shall be sold or offered for sale for fertilizer purposes within this state which contains less than fourteen per cent of plant food, excepting potash in combination with lime, which shall contain not less than two per cent of available potash. This shall not apply to natural animal or vegetable products not mixed with other materials.

(d) No mixed fertilizer containing nitrogen shall guarantee less than two per cent of total nitrogen. No mixed fertilizer containing potash shall guarantee less than two per cent of available potash. (1933, c. 324, s. 15; 1937, c. 430, s. 6.)

Editor's Note.—The 1937 amendment made changes in paragraph (a) and added paragraph (d). The rest of the section, not being affected by the amendment, is not set out.

Art. 4. Pulverized Limestone and Marl

§ 4723(a). **Tonnage tax levied on sale of agricultural lime and land plaster.**—For the purpose of defraying expenses connected with the inspection and analyses of agricultural lime and/or land plaster, there shall be paid by each manufacturer, dealer or agent, to the department of agriculture a charge of five cents (5c) per ton on such agricultural lime and/or land plaster sold or offered for sale in the state, except that which is sold to a fertilizer manufacturer for the sole purpose of use in the manufacture of fertilizers, said charge of five cents (5c) per ton to be collected by the department of agriculture in the same manner as the charge on fertilizers is now collected.

Each bag, parcel or shipment of agricultural lime and/or land plaster shall have attached thereto a tag, or label, to be furnished by the department of agriculture, stating that all charges specified in this law have been paid, and the commissioner, with the advice and consent of the board, is hereby empowered to prescribe a form for such tags or labels and to adopt such regulations as will insure enforcement of this law. Whenever any manufacturer, dealer or agent shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town, or county. Tax tags or labels shall be issued each year by the commissioner and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering agricultural lime and/or land plaster at the end of the calendar year may be exchanged for tags or labels of the succeeding year.

If any manufacturer, dealer or agent, or other seller of agricultural lime and/or land plaster, shall desire to ship in bulk, either by rail or truck, the said manufacturer, dealer or agent shall furnish an invoice or bill of lading with sufficient tax certificates attached, in such form as may be prescribed by the commissioner and board of agriculture, to pay the tax on the amount of goods shipped.

It is required of each person registering agricultural lime and/or land plaster under this law that he furnish the commissioner with a written statement of the tonnage of agricultural lime and/or land plaster sold by him in this state. Said statements shall include all sales for the periods of January first to and including June thirtieth, and of July first to and including December thirty-first of each year. These statements are to be made within thirty days of the expiration date of each

of these periods. Shipments of agricultural lime to fertilizer manufacturers in bulk to be used in the manufacture of fertilizer not to be included.

It shall be the duty of the commissioner, personally or by agents duly authorized in writing, to make such inspection of agricultural lime and/or land plaster in this state, to have such samples taken, and to have such analyses made as in his judgment may be necessary, whether or not persons offering, selling, or distributing agricultural lime and/or land plaster are complying with the provisions of this law. The commissioner and board of agriculture shall have power to prescribe penalties for failure to meet guarantees; also for failure to use inspection tags or labels. (1937, c. 367, ss. 1-5.)

Art. 8. Bottling Plants for Soft Drinks

§ 4780(3). **Establishment and equipment kept clean; containers sterilized.**—The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily, all bottles and other containers used must be sterilized in caustic soda or alkali solution in not less than three per cent alkali or other solution of the equivalent sterilizing effect as prescribed by the rules and regulations adopted by the board of agriculture. (1935, c. 372, s. 3; 1937, c. 232.)

Editor's Note.—The 1937 amendment inserted the words "or other solution of the equivalent sterilizing effect."

Art. 12. Seed Inspection

§ 4823. Procurement and analysis of samples.—

Upon demand of the owner, his representative or agent having the seed in charge, said sample shall be thoroughly mixed and divided into two samples of at least two ounces each and securely sealed. One of said samples shall be left with or on the premises of the vendor, or party in interest, and the other retained by said commissioner, or analyst, or agent, for analysis. (1917, c. 241, s. 13; 1929, c. 194, s. 13; 1935, c. 380, s. 5; 1937, c. 300, s. 1.)

Editor's Note.—The 1937 amendment, effective Jan. 1, 1938, inserted at the beginning of the next to the last sentence the following: "Upon demand of the owner, his representative or agent having the seed in charge." The rest of the section, not being affected by the amendment, is not set out.

§ 4830. **License tax for sale of seed.**—For the purpose of providing a fund to defray the expenses of the examination and analysis prescribed in this article, each person, firm, or corporation selling or offering for sale in or export from this state any seed as mentioned in this article shall register with the department of agriculture the name of the person, firm, or corporation offering the seed for sale, and shall pay a license tax annually, on January first of each year, of twenty-five dollars (\$25.00) if a wholesaler or a wholesaler and retailer, and ten dollars (\$10.00) if only a retailer. Each branch of any wholesaler or retailer shall be required to pay the retail license tax. The commissioner's receipt for such money shall be license

to conduct the business. Every parcel or package of agricultural and vegetable seeds, as defined in this article, delivered to any farmer of this state for seeding purposes, and weighing ten (10) pounds or more, sold by any person, firm, or corporation whose business residence is either inside or outside the state, shall have affixed thereto a copy of the tag as designated in section 4812; said tag to be purchased from the commissioner of agriculture, and the purchaser of said tag to be subject to the penalties outlined in section 4825 for the use of the same tag a second time: Provided, that tags of the previous year may be given in exchange for tags of the current year: Provided further, that no farmer residing in North Carolina shall be required to procure a state seed license to sell seeds raised on his own farm. (1917, c. 241, s. 17; 1921, c. 235, s. 4; 1929, c. 194, ss. 17, 18; 1937, c. 300, ss. 2, 3.)

Editor's Note.—The 1937 amendment reduced the retailer's tax, inserted the second sentence relating to tax of branch, and added the second proviso.

§ 4831. Tolerance allowances for purity guarantees, specified; tolerance scale for germination.—The word "approximate" as used in this article shall be interpreted as follows:

For purity guarantees the tolerance allowed shall be two-tenths of one per cent, plus twenty per cent of the lesser part of the sample. That is to say, a sample is considered as being made up of two parts, the pure seed (meaning the seed or seeds named on the label), and the balance of the sample (other agricultural seeds, weed seeds and inert matter). For example, if a purity of ninety-eight per cent (98%) is claimed, the sample may test as low as ninety-seven and forty one-hundredth per cent (97.40%) and not be deemed mislabeled; if a purity of eighty-two and twenty one-hundredth per cent (82.20%) is claimed, the sample may test as low as seventy-eight and forty-four one-hundredth per cent (78.44%) and not be deemed mis-labeled.

For germination guarantees the following tolerance scale shall be allowed:

Guarantee (%)	Allowable Variation (%)
90 or above	6
80 or above, but less than 90	7
70 or above, but less than 80	8
60 or above, but less than 70	9
Less than 60	10

(1921, c. 235, s. 5; 1929, c. 194, s. 19; 1931, c. 65; 1937, c. 300, s. 3.)

Editor's Note.—The 1937 amendment, effective Jan. 1, 1938, so changed this section that a comparison here is not practical.

§ 4831(1). Seizure and condemnation authorized, upon violation.—When any section of this article has been violated, the seed may be seized and held until the article has been complied with. If the article has not been complied with within thirty (30) days, said seed may be condemned and sold at public auction. Seizures may be made by the commissioner of agriculture, his agents, or any peace officer. (1937, c. 300, s. 4.)

Art. 14B. Liquid Fuels, Lubricating Oils, Greases, etc.

§ 4870(h). Sale of fuels, etc., different from advertised name prohibited.

Applied in *Maxwell v. Shell Eastern Petroleum Products*, 90 F. (2d) 39.

Art. 14C. Gasoline and Oil Inspection

§ 4870(o). Title of article.—This article shall be known as the Gasoline and Oil Inspection Act. (1937, c. 425, s. 1.)

§ 4870(p). "Gasoline" defined.—The term "gasoline" wherever used in this article shall be construed to mean a refined petroleum naphtha which by its composition is suitable for use as a carburent in internal combustion engines. (1937, c. 425, s. 2.)

§ 4870(q). "Motor fuel" defined.—"Motor fuel" shall be construed to mean all products commonly or commercially known or sold as gasoline, including casing-head or absorption or natural gasoline, benzol, or naphtha, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines which, when subjected to distillation in accordance to the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials, Designation D-86), show not less than ten per centum recovered below three hundred forty-seven degrees Fahrenheit and not less than ninety-five per centum recovered below four hundred sixty-four degrees Fahrenheit. In addition to the above, any other volatile and inflammable liquid when sold or used to propel a motor vehicle on the highways shall be motor fuel. (1937, c. 425, s. 3.)

§ 4870(r). Inspection of kerosene, gasoline and other petroleum products provided for.—All kerosene used for illuminating or heating purposes and all gasoline used or intended to be used for generating power in internal combustion engines or otherwise sold or offered for sale, and all kerosene, benzine, naphtha, petroleum solvents, distillates, gas oil, furnace or fuel oil and all other volatile and inflammable liquids by whatever name known or sold and produced, manufactured, refined, prepared, distilled, compounded or blended for the purpose of generating power in motor vehicles for the propulsion thereof by means of internal combustion engines or which are sold or used for such purposes, and any and all substances or liquids which in themselves or by reasonable combination with others might be used for or as substitutes for motor fuel shall be subject to inspection, to the end that the public may be protected in the quality of petroleum products it buys, that the state's revenue may be protected, and that frauds, substitutions, adulterations and other reprehensible practices may be prevented. (1937, c. 425, s. 4.)

§ 4870(s). Inspection fee; allotments for administration expenses.—For the purpose of defraying the expenses of enforcing the provisions of this article there shall be paid to the commissioner of revenue a charge of one-fourth of one cent per gallon upon all kerosene, gasoline, and other products of petroleum used as motor fuel, which payment shall be made in the manner prescribed by law. There shall, from time to time, be allotted by the budget bureau, from the inspection fees collected under authority of the inspection laws of this state, such sums as may be necessary to ad-

minister and effectively enforce the provisions of the inspection laws. (1937, c. 425, s. 5.)

§ 4870(t). Supervision of motor vehicle bureau; payment into state treasury; "gasoline and oil inspection fund".—Gasoline and oil inspection shall be one organization in activities accounting and reporting under the motor vehicle bureau of the department of revenue. All moneys received under the authority of the inspection laws of this state shall be paid into the state treasury and kept as a distinct fund, to be styled "The Gasoline and Oil Inspection Fund," and the amount remaining in such fund at June thirtieth and December thirty-first of each year shall be turned over to the general fund by the state treasurer. (1937, c. 425, s. 6.)

§ 4870(u). Report of operation and expenses to general assembly.—The commissioner of revenue shall include in his report to the general assembly an account of the operation and expenses under this article. (1937, c. 425, s. 7.)

§ 4870(v). Inspectors, clerks and assistants.—The commissioner of revenue shall appoint and employ such number of gasoline and oil inspectors, clerks and assistants as may be necessary to administer and effectively enforce all the provisions of the inspection laws. All inspectors shall be bonded in the sum of one thousand dollars in the usual manner provided for the bonding of state employees, and the expense of such bonding shall be paid from the gasoline and oil inspection fund created by this article. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. Any inspector who, while in office, shall be interested directly or indirectly in the manufacture or vending of any illuminating oils or gasoline or other motor fuels shall be guilty of a misdemeanor, and upon conviction shall be fined not less than three hundred dollars, or be imprisoned for not less than three months nor more than twelve months, or both such fine and imprisonment, in the discretion of the court. (1937, c. 425, s. 8.)

§ 4870(w). Gasoline and oil inspection board created.—In order to more fully carry out the provisions of this article there is hereby created a gasoline and oil inspection board of five members, to be composed of the commissioner of revenue, the director of the gasoline and oil inspection division, and three members to be appointed by the governor, who shall serve at his will. The commissioner of revenue and the director of the gasoline and oil inspection division shall serve without additional compensation. Other members of the board shall each receive the sum of ten dollars for each day he attends a session of the board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents a mile for the distance to and from Raleigh by the usual direct route for each meeting of the board which he attends. These expenses shall be paid from the gasoline and oil inspection fund created by this article. It shall be the duty of the gasoline and oil inspection board, after public notice and provision for the hearing of all interested parties, to adopt standards for the various grades

of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided, to prescribe the form of the label for the various grades of gasoline, and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this state any products which do not comply with the standards so adopted. The said gasoline and oil inspection board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said board shall constitute a quorum. (1937, c. 425, s. 9.)

§ 4870(x). Adoption of standards based on scientific tests.—The gasoline and oil inspection board shall have the power to adopt standards for the various grades of gasoline based upon scientific tests and ratings. (1937, c. 425, s. 10.)

§ 4870(y). Display of grade rating on pumps, etc.; sales from pumps or devices not labeled; sale of gasoline not meeting standard indicated on label.—At all times there shall be firmly attached to or painted on each dispensing pump or other dispensing device used in the retailing of gasoline a label stating that the gasoline contained therein is North Carolina grade. It shall be the duty of the gasoline and oil inspection board to prescribe the form of said label. Any person, firm, co-partnership, partnership, or corporation who shall offer or expose for sale gasoline from any dispensing pump or other dispensing device which has not been labeled as required by this section, and/or offer and expose for sale any gasoline which does not meet the required standard for the grade indicated on the label attached to the dispensing pump or other dispensing device, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars and be imprisoned for not more than six months, or by either or both in the discretion of the court, and the gasoline offered or exposed for sale shall be confiscated. (1937, c. 425, s. 11.)

§ 4870(z). Regulations for sale of substitutes.—All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, shall, before being sold, exposed or offered for sale, be submitted to the commissioner of revenue for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said commissioner of revenue in writing. (1937, c. 425, s. 12.)

§ 4870(aa). Rules and regulations of board available to interested parties.—It shall be the duty of the commissioner of revenue to make available for all interested parties the rules and regulations adopted by the gasoline and oil inspection board for the purpose of carrying into effect the laws relating to the inspection and transportation of petroleum products. (1937, c. 425, s. 13.)

§ 4870(bb). Establishment of laboratory for analysis of inspected products.—The commissioner of revenue is authorized to provide for the analy-

sis of samples of inspected articles by establishing a laboratory under the gasoline and oil inspection division of the motor vehicle bureau for the analysis of inspected products. (1937, c. 425, s. 14.)

§ 4870(cc). Payment for samples taken for inspection.—The gasoline and oil inspectors shall pay at the regular market price, at the time the sample is taken, for each sample obtained for inspection purposes when request for payment is made: Provided, however, that no payment shall be made any retailer or distributor unless said retailer or distributor or his agent shall sign a receipt furnished by the commissioner of revenue showing that payment has been made as requested. (1937, c. 425, s. 15.)

§ 4870(dd). Powers and authority of inspectors.—The gasoline and oil inspectors shall have the right of access to the premises and records of any place where petroleum products are stored for the purpose of examination, inspection, and/or drawing of samples, and that said inspectors are hereby vested with the authority and powers of peace and police officers in the enforcement of motor fuel tax and inspection laws throughout the state, including the authority to arrest, with or without warrants, and take offenders before the several courts of the state for prosecution or other proceedings, and seize or hold or deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of this article or the rules, regulations or requirements of the commissioner of revenue and/or the gasoline and oil inspection board and also all motor fuels contained therein. Said inspectors shall have power and authority on the public highways or any other place to stop and detain for inspection and investigation any vehicle containing any motor fuel and/or other liquid petroleum products in excess of one hundred gallons or commonly used in the transportation of such fuels and the driver or person in charge thereof, and to require the production by such driver or person in charge of all records, documents and papers required by law to be carried and exhibited by persons in charge of vehicles engaged in transporting such fuels; and whenever said inspectors shall find or see any person engaged in handling, selling, using, or transporting any fuels in violation of any of the provisions of the motor fuel tax or inspection laws of this state, or whenever any such person shall fail or refuse to exhibit to said inspectors, upon demand therefor, any records, documents or papers required by law to be kept subject to inspection or to be exhibited by such person, said person shall be guilty of a misdemeanor, and it shall be the duty of said inspectors to immediately arrest such violator and take him before some proper peace officer of the county in which the offense was committed and institute proper prosecution. (1937, c. 425, s. 16.)

§ 4870(ee). Investigation and inspection of measuring equipment; devices calculated to falsify measures.—The gasoline and oil inspectors shall be required to investigate and inspect the equipment for measuring gasoline, kerosene, lubricating oil, and other liquid petroleum products.

Said inspectors shall be under the supervision of the commissioner of revenue, and are hereby vested with the same power and authority now given by law to inspectors of weights and measures, in so far as the same may be necessary to effectuate the provisions of this article. The rules, regulations, specifications and tolerance limits as promulgated by the national conference of weights and measures, and recommended by the United States bureau of standards, shall be observed by said inspectors in so far as it applies to the inspection of equipment used in measuring gasoline, kerosene, lubricating oil and other petroleum products. Inspectors of weights and measures appointed and maintained by the various counties and cities of the state shall have the same power and authority given by this section to inspectors under the supervision of the commission of revenue. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, the inspector shall condemn and seize all incorrect devices which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect, and in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the commissioner of revenue. After notice in writing the owners or users of such measuring devices which have been condemned for repairs shall have the same repaired and corrected within ten days, and the owners and/or users thereof shall neither use nor dispose of said measuring devices in any manner, but shall hold the same at the disposal of the gasoline and oil inspector. The inspector shall confiscate and destroy all measuring devices which have been condemned for repairs and have not been repaired as required by this article. The gasoline and oil inspectors shall officially seal all dispensing pumps or other dispensing devices found to be accurate on inspection, and if, upon inspection at a later date, any pump is found to be inaccurate and the seal broken, the same shall constitute prima facie evidence of intent to defraud by giving inaccurate measure, and the owner and/or user thereof shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned for not less than three months or by both such fine and imprisonment in the discretion of the court. Any person who shall remove or break any seal placed upon said measuring and/or dispensing devices by said inspectors until the provisions of this section have been complied with shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned for not less than thirty days nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. Any person, firm, or corporation who shall sell or have in his possession for the purpose of selling or using any measuring device to be used or calculated to be used to falsify any measure shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court. (1937, c. 425, s. 17.)

§ 4870(ff). Responsibility of retailers for quality of products.—The retail dealer shall be held

responsible for the quality of the petroleum products he sells or offers for sale: Provided, however, that the retail dealer shall be released if the results of analysis of a sealed sample taken in a manner prescribed by the commissioner of revenue at the time of delivery, and in the presence of the distributor or his agent, shows that the product delivered by the distributor was of inferior quality. It shall be the duty of the distributor or his agent to assist in sampling the product delivered. (1937, c. 425, s. 18.)

§ 4870(gg). Adulteration of products offered for sale.—It shall be unlawful for any person, firm, or corporation who has purchased gasoline or other liquid motor fuel upon which a road tax has been paid to in any wise adulterate the same by the addition thereto of kerosene or any other liquid substance and sell or offer for sale the same. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars or be imprisoned for not more than twelve months or by both such fine and imprisonment in the discretion of the court. (1937, c. 425, s. 19.)

§ 4870(hh). Certified copies of official tests admissible in evidence.—A certified copy of the official test of the analysis of any petroleum product, under the seal of the commissioner of revenue, shall be admissible as evidence of the fact therein stated in any of the courts of this state on the trial of any issue involving the qualities of said product. (1937, c. 425, s. 20.)

§ 4870(ii). Retail dealers required to keep copies of invoices and delivery tickets.—Every person, firm, or corporation engaged in the retail business of dispensing gasoline and/or other petroleum products to the public shall keep on the premises of said place of business, for a period of one year, duplicate original copies of invoices or delivery tickets of each delivery received, showing the name and address of the party to whom delivery is made, the date of delivery, the kind and amount of each delivery received, and the name and address of the distributor. Each delivery ticket or invoice shall be signed by the retailer or his agent and the distributor or his agent. Such records shall be subject to inspection at any time by the gasoline and oil inspectors. (1937, c. 425, s. 21.)

§ 4870(jj). Prosecution of offenders.—All prosecutions for fines and penalties under the provisions of this article shall be by indictment in a court of competent jurisdiction in the county in which the violation occurred. (1937, c. 425, s. 22.)

§ 4870(kk). Violation a misdemeanor.—Unless another penalty is provided in this article, any person violating any of the provisions of this article or any of the rules and regulations of the commissioner of revenue and/or the gasoline and oil inspection board shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than twelve months, or by both such fine and imprisonment in the discretion of the court. (1937, c. 425, s. 23.)

§ 4870(ll). Persons engaged in transporting, are subject to inspection laws.—The owner or operator of any motor vehicle using the highways of this state or the owner or operator of any boat using the waters of this state transporting into, out of or between points in this state any gasoline or liquid motor fuel taxable in this state and/or any liquid petroleum product that is or may hereafter be made subject to inspection laws of this state shall make application to the commissioner of revenue on forms to be provided by him for a liquid fuel carrier's permit. Upon receipt of said application, together with a signed agreement to comply with the provisions of the act and/or acts relating to the transportation of petroleum products subject to the motor fuel tax and/or inspection laws, the commissioner of revenue shall, without any charge therefor, issue a numbered liquid fuel carrier's permit to the owner or operator of each motor vehicle or boat intended to be used in such transportation. Said numbered liquid fuel carrier's permit shall show the motor number and license number of the motor vehicle and number or name of boat, and shall be prominently displayed on the motor vehicle or boat at all times. No person shall haul, transport, or convey any motor fuel over any of the public highways of this state except in vehicles plainly and visibly marked on the rear thereof with the word "Gasoline" in plain letters of not less than six inches high and of corresponding appropriate width, together with the name and address of the owner of the vehicle in letters of not less than four inches high: Provided, however, that this section shall not be construed to include the carrying of motor fuels in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle except when said fuel supply tank shall have a capacity of more than one hundred gallons. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars. (1937, c. 425, s. 24.)

§ 4870(mm). Persons engaged in transporting required to have in possession an invoice, bill of sale or bill of lading.—Every person hauling, transporting or conveying into, out of, or between points in this state any motor fuel and/or any liquid petroleum product that is or may hereafter be made subject to the inspection laws of this state over either the public highways or waterways of this state, shall, during the entire time he is so engaged, have in his possession an invoice, or bill of sale, or bill of lading showing the true name and address of the person from whom he has received the motor fuel and/or other liquid petroleum products, the kind, and the number of gallons so originally received by him, and the true name and address of every person to whom he has made deliveries of said motor fuel and/or other liquid petroleum products or any part thereof and the number of gallons so delivered to each said person. Such person engaged in transporting said motor fuels and/or other petroleum products shall, at the request of any agent of the commissioner of revenue, exhibit for inspection such papers or documents immediately, and if said person fails to produce said papers or documents or if, when produced, it fails to clearly

disclose said information, the agent of the commissioner of revenue shall hold for investigation the vehicle and contents thereof. If investigation shows that said motor fuels and/or other petroleum products are being transported in violation of or without compliance with the motor fuel tax and/or inspection laws of this state such fuels and/or other petroleum products and the vehicle used in the transportation thereof are hereby declared common nuisances and contraband, and shall be seized and sold and the proceeds shall go to the common school fund of the state: Provided, however, that this article shall not be construed to include the carrying of motor fuel in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle, except when said fuel supply tank shall have a capacity of more than one hundred gallons: Provided, this section shall not apply to franchise carriers. (1937, c. 425, s. 25.)

§ 4870(nn). Display required on containers used in making deliveries.—Every person delivering at wholesale or retail any gasoline in this state shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "Gasoline" or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in colors to meet the requirements of the regulations adopted by the commissioner of revenue and/or the gasoline and oil inspection board. Such dealers shall not deliver kerosene oil in any barrel, cask, can, or other container which has not been stenciled or labeled as hereinbefore provided. Every person purchasing gasoline for use or sale shall procure and keep the same only in tanks, barrels, casks, cans, or other containers stenciled or labeled as hereinbefore provided: Provided, that nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank of any automobile or any other motor vehicle: Provided further, that in case gasoline or other inflammable liquids is sold in bottles, cans, or packages of not more than one gallon for cleaning and other similar purposes, the label shall also bear the words "Unsafe when exposed to heat or fire": Provided further, that this section shall not apply to franchise carriers. (1937, c. 425, s. 26.)

§ 4870(oo). Registration of exclusive industrial users of naphthas and coal tar solvents.—All persons who are exclusive industrial users of naphtha and coal tar solvents, and who are not engaged in the business of selling motor fuel, may register with the commissioner of revenue as an exclusive industrial user of naphthas and coal tar solvents upon the presentation of satisfactory evidence of such fact to said commissioner and the filing of a surety bond in approved form not to exceed the sum of one thousand dollars. Such registration, properly evidenced by the issuance of a certificate of registration as an exclusive industrial user of naphthas and coal tar solvents, will thereafter, and until such time as certificate of registration may be canceled by the commissioner of revenue, permit licensed distributors of motor fuel in this state to sell naphthas and coal tar solvents to the holder of such certificate of registration upon the proper execution of an official certificate of in-

dustrial use in lieu of the collection of the motor fuel tax: Provided, however, that no licensed distributor of motor fuel shall sell gasoline tax free under the conditions of this article: Provided further, that the rules and regulations adopted by the commissioner of revenue for the proper administration and enforcement of this article shall be strictly adhered to by the holder of the certificate of registration under penalty of cancellation of such certificate for violation of or non-observance of such rules. (1937, c. 425, s. 27.)

§ 4870(pp). Certain laws adopted as part of article.—Chapter one hundred seventy-four, Public Laws of one thousand nine hundred twenty-seven [§§ 4870(a)-4870(e)], and chapter one hundred eight, Public Laws of one thousand nine hundred thirty-three [§§ 4870(g)-4870(n)], are hereby made a part of this article. (1937, c. 425, s. 28.)

§ 4870(qq). Charges for analysis of samples.—The commissioner of revenue is hereby authorized to fix and collect such charges as he may deem adequate and reasonable for any analysis made by the gasoline and oil inspection division of any sample submitted by any person, firm, association or corporation other than samples submitted by the gasoline and oil inspectors in the performance of the duties required of said inspectors under this article: Provided, however, that no charge shall be made for the analysis of any sample submitted by any municipal, county, state or federal official when the results of such analyses are necessary for the performance of his official duties. All moneys collected for such analyses shall be paid into the state treasury to the credit of the gasoline and oil inspection fund. (1937, c. 425, s. 29.)

§ 4870(rr). Inspection of fuels used by state.—The gasoline and oil inspection division is hereby authorized, upon request of the proper state authority, to inspect, analyze, and report the result of such analysis of all fuels purchased by the state of North Carolina for the use of all departments and institutions. (1937, c. 153.)

Art. 15. Animal Diseases

Part 7. Rabies

§ 4895(3). Appointment of rabies inspectors; preference to veterinarians.

Editor's Note.—By Public Laws 1937, c. 255, the board of county commissioners of Davie county was authorized and directed to appoint one rabies inspector for said county instead of one for each township as provided in this section.

Part 8. Bang's Disease

§ 4895(26). Animals affected with, or exposed to Bang's disease, declared subject to quarantine, etc.—It is hereby declared that the disease of animals known as Bang's disease, contagious abortion, abortion disease, bovine infectious abortion, or Bang's bacillus disease, is of a contagious and infectious character, and animals affected with, or exposed to, or suspected of being carriers of said disease shall be subject to quarantine and the rules and regulations of the department of agriculture. (1937, c. 175, s. 1.)

§ 4895(27). "Bang's disease" defined; co-operation with federal department of agriculture.—Bang's disease shall mean the disease wherein an

animal is infected with the Bang bacillus, irrespective of the occurrence or absence of an abortion. An animal shall be declared infected with Bang's disease if it reacts to a seriological test, or if the Bang bacillus has been found in the body or its secretions or discharge, or if it has been treated with a live culture of the Bang bacillus. The control and eradication of Bang's disease in the herds of the state shall be conducted as far as the funds of the department of agriculture will permit, and in accordance with the rules and regulations made by the said department. Said department of agriculture is hereby authorized to co-operate with the United States department of agriculture in the control and eradication of Bang's disease. (1937, c. 175, s. 2.)

§ 4895(28). Blood samples; diseased animals to be branded and quarantined; sale, etc.—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and to report same to the state veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the state veterinarian. (1937, c. 175, s. 3.)

§ 4895(29). Civil liability of vendors.—Any person or persons who knowingly sells or otherwise disposes of, to another, an animal affected with Bang's disease shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4.)

§ 4895(30). Sales by non-residents.—When cattle are sold, or otherwise disposed of, in this state, by a non-resident of this state, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of this law and the regulations of the department of agriculture. (1937, c. 175, s. 5.)

§ 4895(31). Duties of state veterinarian; quarantine for failure to comply with recommendations.—When the state veterinarian receives information, or has reason to believe that Bang's disease exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the state veterinarian or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the state veterinarian within ten days after said notice, then the state veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined. Said quarantine shall remain in effect until the said recommendations of the state veterinarian have been complied with and the quarantine is

canceled by the state veterinarian. (1937, c. 175, s. 6.)

§ 4895(32). Co-operation of county boards of commissioners.—The several boards of county commissioners in the state are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to co-operate effectively with the state and federal departments of agriculture in the eradication of Bang's disease in their respective counties. (1937, c. 175, s. 7.)

§ 4895(33). Compulsory testing.—Whenever a county board shall co-operate with the state and federal governments, as provided for in this law, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle, and no cattle, except for immediate slaughter, shall be brought into the county unless accompanied by a proper test chart and health certificate issued by a qualified veterinarian, showing that the cattle have passed a proper test for Bang's disease. (1937, c. 175, s. 8.)

§ 4895(34). "Qualified veterinarian" defined.—The words "qualified veterinarian" shall be construed to mean a veterinarian approved by the state veterinarian and chief of the United States bureau of animal industry for the testing of cattle intended for interstate shipment. (1937, c. 175, s. 9.)

§ 4895(35). Authority to promulgate and enforce rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of this law and for the effective control and eradication of Bang's disease. (1937, c. 175, s. 10.)

§ 4895(36). Violation made misdemeanor.—Any person or persons who shall violate any provision set forth in this law, or any rule or regulation duly established by the state board of agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (1937, c. 175, s. 11.)

§ 4895(37). Punishment for sales of animals known to be infected.—Any person or persons who shall wilfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with Bang's disease, except as provided for in this law, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars and not more than two hundred dollars, or imprisoned for a term of not less than thirty days or more than two years. (1937, c. 175, s. 12.)

Art. 19A. Production, Sale, Marketing and Distribution of Tobacco

§ 4930(1). Definitions.—As used in this article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

"Person" means any individual, partnership, firm, joint-stock company, corporation, associa-

tion, trust, estate, or any agency of the state or federal government.

"Similar act" means an act of another state containing provisions substantially the same as this article, except that the omission of provisions requiring the establishment of acreage quotas for individual farms shall not be deemed a substantial variation from this article.

"Kind of tobacco" means one or more types of tobacco as classified in the service and regulatory announcement number one hundred and eighteen of the bureau of agricultural economics of the United States department of agriculture as listed below, according to the name or names by which known:

Types eleven, twelve, thirteen and fourteen, known as flue-cured tobacco.

Type thirty-one, known as burley tobacco.

"Crop year" means the period from May first of one year to April thirtieth of the succeeding year, both dates inclusive.

"Surplus tobacco" means the quantity of tobacco marketed from the crop produced on a farm in any crop year in excess of the marketing quota for such farm for such year.

"Buyer or handler" means any person who buys tobacco from the producer thereof, or who sells tobacco for the producer thereof, and pays the producer for such tobacco, or who redries or otherwise processes tobacco for the producer thereof prior to the sale of such tobacco by the producer, or any producer who markets tobacco produced by him directly to the consumer.

"Dealer" means any person who buys and resells tobacco prior to the redrying, conditioning, or processing thereof.

"Producer" means any person who has the right during any year to sell, or to receive a share of the proceeds derived from the sale of, tobacco produced by him or on land owned or leased by him.

"Operator" means any person who, as owner-operator, or as cash rent, standing rent, or share rent tenant, operates a farm (i. e., a tract or tracts of land operated as a unit with the same machinery and other equipment) on which tobacco is produced, and includes a share-cropper who operates a farm if the owner-operator or tenant does not provide for the obtaining of marketing certificates with respect to the tobacco crop of the farm. (1937, c. 22, s. 1.)

Editor's Note.—This article, known as the Tobacco Compact Act, depended upon similar action in other tobacco-producing states, which failed to materialize, and consequently is of no avail until other tobacco-producing states co-operate. 15 N. C. Law Rev., No. 4, p. 323.

§ 4930(2). North Carolina tobacco commission created; members; county and district committeemen; vacancies; compensation.—There is hereby created a commission to be known as the North Carolina tobacco commission (hereinafter referred to as the "commission"). The commission shall consist of seven (7) members, and each of the four (4) tobacco belts, viz: eastern belt, middle belt, old belt and border belt, shall have one or more representatives selected as follows: When this article becomes effective, the director of the state agricultural extension service shall arrange for a meeting of tobacco producers in each county (any county in which there are less than one hundred tobacco producers shall be grouped with an-

other adjoining county), at which three (3) tobacco producers shall be elected, by the producers attending the meeting, to serve as county committeemen for one crop year. The director of the state agricultural extension service shall divide the state into six (6) districts and arrange for a meeting of the county committeemen elected in each district, at which meeting the county committeemen in each district shall nominate from among their number three (3) producers to serve as district committeemen. From the three (3) district committeemen nominated in each district the governor shall appoint one producer to serve for a period of one crop year as a member of the commission. The director of the state agricultural extension service shall serve, or shall appoint one member of his staff to serve, as a member of the commission. Vacancies on the commission during any crop year shall be filled by the governor by the appointment of another district committeeman for the remainder of such year from the district in which the vacancy occurs: Provided, that the director of the state agricultural extension service shall fill the vacancy in the case of the member of the commission appointed by him. At the end of each crop year the tobacco commission shall be selected for the succeeding crop year in the manner provided above. Each member of the commission not already in the employment of the state shall be paid the sum of ten dollars (\$10.00) for each day actually spent in the performance of his duties, and shall be reimbursed for subsistence, not exceeding five dollars (\$5.00) per day, and for necessary travel expenses. (1937, c. 22, s. 2.)

§ 4930(3). Compacts with governors of other states.—The governor is authorized and directed to negotiate and enter into a compact with respect to each kind of tobacco with the governor of each of the states producing such kind of tobacco: Provided, (1) that any compact shall not become effective until it has been entered into by the states of North Carolina, Virginia, South Carolina and Georgia, and any compact with respect to burley tobacco shall not become effective until it has been entered into by the states of North Carolina, Kentucky, Virginia and Tennessee; (2) that a compact with respect to any kind of tobacco shall not become effective during any crop year unless entered into prior to the first day of such crop year, and (3) that any provisions in such compact or compacts which relate to the establishment of tobacco acreage quotas as provided herein shall not become effective unless and until the consent of the congress of the United States shall be given to a compact or compacts providing for the establishment of tobacco acreage quotas. This article shall be enforced with respect to any kind of tobacco upon the establishment of a compact with respect to such kind of tobacco, and its enforcement with respect to such kind of tobacco shall be suspended upon the withdrawal from such compact by any state required as a party thereto. If an injunction issued by a court of competent jurisdiction against the enforcement of a similar act of any state is made permanent so as to stop the administration of said act in such state during any crop year, the enforcement of this article may be suspended by the commission with respect to the kind of to-

bacco covered by such compact until such time as the compact is again made effective or the injunction dissolved, as the case may be. Upon the filing with the commission of a petition or petitions by fifteen per cent or more of the producers of any kind of tobacco in this state requesting that the enforcement of this article be suspended with respect to such kind of tobacco, the commission shall conduct a referendum within sixty days after the receipt of such petition or petitions to determine whether the producers of such kind of tobacco in the state are in favor of the enforcement of this article, and if the commission finds that one-third or more of the producers who vote in the referendum are not in favor of the enforcement of the article, such findings of the commission shall be certified to the governor, who shall proclaim the article inoperative for the crop year next succeeding the crop year in which the referendum is conducted. (1937, c. 22, s. 3.)

§ 4930(4). Cooperation with other states and secretary of agriculture in making determinations.

—The commission shall meet and co-operate with the tobacco commissions of other states that are parties to a compact, and any persons designated by the secretary of agriculture of the United States to serve in an advisory capacity, for the purposes of making certain determinations enumerated in this section, and when such determinations are agreed upon by a majority of the members of the commission for this state, and a majority of the members of the commissions for other states, such determinations shall be accepted and followed in the administration of this article.

(a) Determine from statistics of the United States department of agriculture a marketing quota, which for any kind of tobacco shall be that quantity of such kind of tobacco produced in the United States which is estimated to be required for world consumption during any crop year, increased or decreased, as the case may be, by the amount by which the world stocks of such kind of tobacco at the beginning of such crop year are less than or greater than the normal world stocks of such kind of tobacco.

(b) Determine a tobacco marketing quota for each state, for each kind of tobacco, for each crop year for which this article is in effect with respect to such kind of tobacco. The marketing quota for each state for each kind of tobacco shall be that percentage of the quantity determined under sub-section (a) of this section which is equal to the percentage that the total production of such kind of tobacco in the state for the year or years set forth below is of the total production of such kind of tobacco in the United States for such year or years:

Flue-cured tobacco, one thousand nine hundred and thirty-five, and burley tobacco, one thousand nine hundred and thirty-three, one thousand nine hundred and thirty-four, and one thousand nine hundred and thirty-five.

(c) Determine a base tobacco yield for each state for each kind of tobacco. The base tobacco yield for each kind of tobacco for each state shall be the total production of such kind of tobacco in such state in the year or years named in sub-section (b) of this section, divided by the total harvested acreage of such kind of tobacco in such state in such year or years.

(d) Determine and make such adjustments from year to year in the percentage of the marketing quota to be assigned to each state, or in the base yield for each state, or both (as determined pursuant to sub-sections (b) and (c) of this section and as adjusted in any preceding year pursuant to this sub-section), not exceeding two per cent (2%) decrease or five per cent (5%) increase in any crop year of the percentage of the said marketing quota assigned to each state, or five per cent (5%) decrease or increase of the base yield for each state in any crop year, as are determined to be necessary to correct for any abnormal conditions of production during the year or years specified in subsection (b) of this section, and trends in production during or since such year or years in any state as compared with other states: Provided, that the percentages of the marketing quota for any kind of tobacco for all states producing such kind of tobacco, as adjusted pursuant to this sub-section, for any year shall equal one hundred per cent (100%).

(e) Determine and make adjustments in the marketing quota established pursuant to sub-sections (b) and (d) of this section for any kind of tobacco for any crop year, not exceeding ten per cent (10%) of said quota, from time to time during that period from August first to December fifteenth of such year if, upon the study of supply and demand conditions for such kind of tobacco, the commission finds that such adjustments are required to effectuate the purpose of this article and of similar acts of other states: Provided, that any such adjustment shall apply uniformly to all states and only during the crop year in which such adjustment is made.

(f) Determine regulations with respect to the transfer of marketing certificates among producers of any kind of tobacco within the states which are parties to a compact with respect to such kind of tobacco, and such other regulations as may be deemed appropriate to the uniform administration and enforcement of this article and of similar acts of other states. (1937, c. 22, s. 4.)

§ 4930(5). Tobacco acreage and marketing quotas for each farm.—The commission shall establish tobacco acreage and tobacco marketing quotas for each crop year for any farm on which tobacco is grown, such quotas to be determined as follows:

(a) For any farm for which a base tobacco acreage and a base tobacco production have previously been determined by the agricultural adjustment administration of the United States department of agriculture, as shown by the available records and statistics of that department, the base tobacco acreage and base tobacco production so last determined shall constitute the tobacco acreage and tobacco marketing quotas, subject to such adjustments as are recommended by the county committee of the county in which the farm is located and approved by the commission as being in conformity with the provisions of sub-sections (c) and (d) of this section.

(b) For any farm for which a base tobacco acreage and base tobacco production have not been previously determined by the agricultural adjustment administration of the United States department of agriculture, the tobacco acreage and tobacco marketing quotas shall be estab-

lished in conformity with the provisions of sub-sections (c) and (d) of this section: Provided, that the total of the tobacco acreage and of the tobacco marketing quotas established for such farms in any crop year shall not exceed two per cent (2%) of the total tobacco acreage and tobacco marketing quotas, respectively, established pursuant to sub-section (a) of this section, plus the tobacco acreage and the tobacco marketing quotas established for farms in preceding years pursuant to this sub-section.

(c) The tobacco acreage and the tobacco marketing quotas established for each farm shall be fair and reasonable as compared with the tobacco acreage and the tobacco marketing quotas for other farms which are similar with respect to the following: The past production of tobacco on the farm and by the operator thereof; the percentage of total cultivated land in tobacco and in other cash crops; the land, labor, and equipment available for the production of tobacco; the crop rotation practices and the soil and other physical factors affecting the production of tobacco. The acreage quota for farms in a county shall not exceed such maximum percentage of the cultivated acreage as shall be fixed by the county committee, and the maximum so set by the county committee shall not exceed a percentage which will insure the adjustment of the inequalities existing in such county.

(d) The total of the tobacco acreage quotas for any kind of tobacco established for all farms in the state in any crop year shall not exceed a tobacco acreage quota for the state determined by dividing the marketing quota for such kind of tobacco for the state by the base tobacco yield for such kind of tobacco for the state, determined in accordance with sub-sections (c) and (d) of section 4930(4).

The tobacco acreage and the tobacco marketing quotas for any kind of tobacco established for each farm in any crop year pursuant to sub-sections (a) and (b) of this section shall be adjusted so that the aggregate of the tobacco acreage quotas and the aggregate of the tobacco marketing quotas for all farms in the state does not exceed the tobacco acreage and the tobacco marketing quotas, respectively, for such kind of tobacco established for the state for such year; and the commission shall prescribe such regulations with respect to such adjustments as will tend to protect the interests of small producers.

(e) If, after marketing quotas are established for farms for any kind of tobacco in any crop year, there is an adjustment, pursuant to sub-section (e) of section 4930(4), in the marketing quota for such kind of tobacco for the state for such year, the marketing quotas for all farms in the state shall be adjusted accordingly.

(f) If a base tobacco yield is not determined by the several state commissions the commission for this state shall determine a base yield for the state in accordance with the procedure specified in sub-sections (c) and (d) of section 4930(4).

(g) In each county there shall either be published in one local newspaper the following information for each township of the county: (1) the name of each tobacco grower in that township; (2) the number of his tobacco tenants; (3) his

total cultivated acres; (4) his total tobacco acreage and tobacco marketing quota; (5) the per cent of his cultivated land represented by his tobacco acreage quota, or else there shall be posted in at least five public places in each township a report for that township showing this information. One copy of such information shall be filed in the office of the clerk of the superior court in the county.

(h) No reduction shall be required in the flue-cured tobacco acreage quota established for any farm if such quota is three and two-tenths acres or less: Provided, that if the operator of the farm reduces the acreage of tobacco grown on the farm in any year below the acreage quota, a proportionate reduction may be required in the marketing quota for the farm.

(i) The terms of this article, relating to the fixing of acreage or marketing quotas, shall not apply to any grower of burley tobacco, with or without an established acreage base, whose acreage is two acres or less. (1937, c. 22, s. 5; c. 24, ss. 1-3.)

§ 4930(6). Notification of quotas established and adjustments; marketing and resale certificates; charge for surplus tobacco; administrative committees, agents and employees; hearings and investigations; collection of information; regulations.—The commission is authorized and directed:

(a) To notify as promptly as possible the operator of each farm, for which acreage and marketing quotas are established, of the amount of such quotas for the farm and of any adjustment thereof which may be made from time to time pursuant to this article.

(b) Upon application therefor by the operator of the farm, or by the person marketing the tobacco grown thereon, to issue to the buyer or handler who purchases or handles such tobacco, marketing certificates for an amount of tobacco not in excess of the marketing quota for the farm (as adjusted pursuant to subsection (d) of section 4930(5)) on which such tobacco is produced, or not in excess of the quantity of tobacco harvested from the crop produced on such farm, whichever is smaller: Provided, that the commission (in accordance with regulations prescribed by the commission) may provide for the issuance and transfer of marketing certificates for an amount of tobacco equal to the amount by which the said quantity marketed falls below the said marketing quota for any farm; and Provided further, that any regulations pertaining to such issuance and transfer shall be uniform as to the same kind of tobacco in all states entering into a compact with respect to such kind of tobacco.

(c) Upon application therefor by any buyer or handler to issue marketing certificates for surplus tobacco produced on the farm upon payment of a charge of twenty-five per cent (25%) of the gross value, or of one and one-half cents (1½c) per pound, whichever is larger, of the tobacco covered by such certificates. The buyer or handler, in settling with the grower, shall deduct from the proceeds of sale of such surplus tobacco or, if not sold, from any advance or loan thereon, the amount of such charge, which charge shall be deemed an assessment upon the producer for the purposes of paying the costs, charges, and expenditures provided for by this article.

(d) Upon application therefor by any tobacco dealer to issue, under such terms and conditions as the commission shall by regulations prescribe, resale certificates for such tobacco purchased by any dealer during any day as such dealer specified will be resold prior to the redrying or processing thereof, where marketing certificates or resale certificates have been issued for such tobacco pursuant to the provisions of this article.

(e) To establish or provide for the establishment of such committees of tobacco producers, and to appoint such agents and employees as the commission finds necessary for the administration of this article, and to fix the compensation of the members of the county committees referred to in section 4930(2), and of such agents and employees: Provided, that the rates of compensation for such committeemen, agents and employees shall be comparable with rates of compensation to persons employed in similar capacities in connection with the administration of the agricultural conservation program, and acceptable to the federal authority.

(f) To provide for the making of such investigations and the holding of such hearings as the commission finds necessary in connection with the establishment of acreage and marketing quotas for farms and to designate persons to conduct such investigations and hold such hearings in accordance with regulations prescribed by the commission.

(g) To provide for collection of such information pertaining to the acreage of tobacco grown for harvest on each farm as the commission may consider necessary for the purpose of checking such acreage with the acreage quota for the farm and to prescribe any such regulations as may be necessary in connection therewith.

(h) To prescribe such other regulations as the commission finds necessary to the exercise of the powers and the performance of the duties vested in it by the provisions of this article. (1937, c. 22, s. 6.)

§ 4930(7). Board of adjustment and review for each county.—The county committee of each county shall be and it is hereby constituted the board of adjustment and review for its county, whose duty it shall be to adjust and distribute the total base acreage and marketing quotas allocated to the several farms in the county by the commission so as to effectuate the provisions of this article.

(a) The county board of adjustment and review may designate a clerk for such board.

(b) The board of adjustment and review shall meet on the first Monday in January of each and every year, after giving ten days notice (by publication in a newspaper published in the county) of the time, place and purpose of the meeting, and may adjourn from day to day while engaged in the adjustment and review of the acreage and marketing quotas of the county, but shall complete their duties on or before the first Monday in February of each and every year: Provided, however, that the commission shall designate the time within which the said adjustment and review shall be made for the year one thousand nine hundred and thirty-seven.

(c) The board of adjustment and review, on request, shall hear any and all producers, oper-

ators, and applicants in the county in respect to their acreage or marketing quotas, or the quotas of others; and after due notice to the person or persons affected, shall allow, increase, or reduce such acreage or marketing quotas as in their opinion will make a fair and equitable allotment within the meaning of this article; and shall cause to be done whatever else may be necessary to make the distribution of county acreage and marketing quotas comply with the provisions of this article; and after the completion of the adjustment and review, a list showing the details thereof shall be prepared, and a majority of the board shall endorse thereon and sign the statement to the effect that the same is the fixed list of quotas for the current year, and said list, or a certified copy thereof, shall be filed in the office of the clerk of the superior court within three days after the completion of the adjustment and review.

(d) Any producer, operator, or person claiming or challenging an allotment quota may except to the decision of the board of adjustment and review and appeal therefrom to the commission by filing in duplicate a written notice of such appeal with the county committee within ten days after the filing of the list of quotas in the office of the clerk of the superior court. At the time of filing such notice of appeal the appellant shall file with the county committee a statement in duplicate of the grounds of appeal; and within three days after the filing thereof the county committee shall forward or cause to be forwarded to the commission one copy each of the notice of appeal and statement of grounds of appeal. The commission shall, on or before the first Monday in March thereafter, hear and determine such appeal, after first giving due notice of the time and place of such hearing to the appellant and to the chairman of the county committee. At the hearing the commission shall hear relevant and pertinent testimony or affidavits offered by the appellant or county committee; and thereafter, by order, shall modify or confirm the decision of the county board of adjustment and review, and shall deliver to the county committee a certified copy of such order, which shall be binding upon all parties concerned for the current year. (1937, c. 24, s. 4.)

§ 4930(8). Handling of funds and receiving payments.—The commission is authorized:

(a) To accept, deposit with the state treasurer and provide for the expenditure of such funds as the congress of the United States may advance or grant to the state for the purpose of administering this article. Such expenditures shall be in accordance with the act of congress authorizing or making such advance or grant.

(b) To receive, through such agents as it may designate, all payments covering the sale of marketing certificates pursuant to sub-section (c) of section 4930(6); to provide for the fixing of an adequate bond for any person responsible for receiving and disbursing any funds of or administered by the commission; and to provide for the expenditure of such funds in the manner prescribed in section 4930(10). (1937, c. 22, s. 7.)

§ 4930(9). "Tobacco commission account" deposited with state treasurer.—All receipts from the sale of marketing certificates pursuant to sub-

section (c) of section 4930(6) and all funds granted or advanced to the state by the congress of the United States for the purpose of administering this article shall be deposited with the state treasurer and shall be placed by him in a special fund known as the "Tobacco Commission Account," and the entire amount of such receipts and funds hereby is appropriated out of such tobacco commission account and shall be available to the commission until expended. (1937, c. 22, s. 8.)

§ 4930(10). Purposes for which funds expended; reserve necessary.—Funds of or administered by the commission shall be expended, in accordance with regulations prescribed by the commission, for the following purposes: First, to repay to the treasurer of the United States any funds advanced by the United States to the commission for the purpose of administering this article: Provided, the United States requires such repayment. Second, to pay any expenses lawfully incurred in the administration of this article, including expenses of any agency of the state incurred at the request of the commission. Third, to make payment to tobacco producers whose sales of tobacco, because of loss by fire or weather, or diseases affecting their tobacco crops adversely during any crop year, are less than the marketing quotas for their farms for such year. Such payments shall be at a rate per pound of such deficit determined by dividing the funds available for such payments by the total number of pounds by which the sales of tobacco by all producers fell below the marketing quotas for their farms: Provided, that such deficit is due to loss by fire or weather, or disease affecting their crops adversely; and Provided further, that such rate of payment shall in no event exceed five cents (5c) per pound, and that no such payments shall be made until there is established as a reserve an amount necessary to pay the expenses which the commission estimates will be incurred in the administration of this article for a period of one crop year. (1937, c. 22, s. 9.)

§ 4930(11). Unlawful to sell, buy, etc., without marketing certificate; restrictions upon dealers.—Upon the establishment of marketing quotas for any kind of tobacco for individual farms for any crop year, pursuant to the provisions of this article, it shall be unlawful:

(a) For any person knowingly to sell, to buy, to redry or to condition or to otherwise process any of such kind of tobacco harvested in such crop year unless the marketing certificates therefor have been issued as provided in this article.

(b) For any dealer to resell any of such kind of tobacco for which marketing certificates have not been issued as aforesaid prior to the redrying, conditioning, or processing thereof, except in his own name, or to resell any such tobacco except that purchased and owned by him and covered by a marketing certificate or resale certificate previously issued showing such dealer to be the purchaser of such tobacco, or to redry, condition, or process or to have redried, conditioned, or processed, prior to the resale thereof, any such tobacco covered by a resale certificate unless the resale certificate issued with respect thereto is surrendered to the commission. (1937, c. 22, s. 10.)

§ 4930(12). Violation punishable by forfeiture of sum equal to three times value of tobacco.—Any person wilfully selling, buying, redrying, conditioning, or processing tobacco of any kind with respect to which this article is effective for which marketing certificates or resale certificates have not been issued as provided in this article, or any person wilfully participating or aiding in the selling, buying, redrying, conditioning, or processing of tobacco not covered by such marketing or resale certificates, or any person offering for sale or selling any tobacco except in the name of the owner thereof, shall forfeit to the state a sum equal to three times the current market value of such tobacco at the time of the commission of such act, which forfeiture shall be recoverable in a civil suit brought in the name of the state. (1937, c. 22, s. 11.)

§ 4930(13). Forfeiture for harvesting from acreage in excess of quota.—Any operator wilfully harvesting or wilfully permitting the harvesting of tobacco on a farm from an acreage in excess of the acreage quota for the farm shall forfeit to the state a sum equal to fifty dollars (\$50.00) per acre of that acreage harvested in excess of the acreage quota for the farm, which forfeiture shall be recoverable in a civil suit brought in the name of the state. (1937, c. 22, s. 12.)

§ 4930(14). Violation a misdemeanor.—Any person violating any provisions of this article, or of any regulation of the commission issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not more than fifty dollars (\$50.00) for the first offense and not more than one hundred dollars (\$100.00) for each subsequent offense. (1937, c. 22, s. 13.)

§ 4930(15). Penalty for failure to furnish information on request of commission.—All tobacco producers, warehousemen, buyers, dealers, and other persons having information with respect to the planting, harvesting, marketing, or redrying or conditioning or processing of tobacco in this state for sale or resale to manufacturers, domestic or foreign, shall from time to time, upon the written request of the commission or its duly authorized representative, furnish such information and file such returns as the commission may find necessary or appropriate to the enforcement of this article. Any person wilfully failing or refusing to furnish such information or to file such return, or wilfully furnishing any false information or wilfully filing any false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not more than one hundred dollars (\$100.00) for each such offense. (1937, c. 22, s. 14.)

§ 4930(16). Courts may punish or enjoin violations.—All courts of this state of competent jurisdiction are hereby vested with jurisdiction specifically to punish violations of this article, and the superior courts of the state are vested with jurisdiction, upon application of the commission, to enjoin and restrain any person from violating the provisions of this article or of any regulations issued pursuant to this article. (1937, c. 22, s. 15.)

§ 4930(17). Attorneys for state to institute proceedings, etc., commission to report violations to

solicitors, etc.—Upon the request of the commission it shall be the duty of the several attorneys for the state, in their respective jurisdictions, to institute proceedings to punish for the offenses, enforce the remedies, and to collect the forfeitures provided for in this article, and it shall be the duty of the commission to call to the attention of the prosecuting officers of the state any violation of any of the criminal provisions of this article. (1937, c. 22, s. 16.)

§ 4930(18). Receipts from surplus produced in other states, paid to commission of such states; co-operation with other commissions.—In order to assure the proper co-ordination of the administration of this article with the administration of similar acts of other states, marketing certificates and resale certificates shall be issued by the commission, in accordance with regulations prescribed by the commission, with respect to tobacco marketed in this state, or redried, conditioned, or processed in this state prior to the first sale thereof, or resold, even though such tobacco was produced in another state, and the receipts from sales of marketing certificates for surplus tobacco produced in such other state shall be paid to the commission of the state in which such tobacco was produced, and the commission shall co-operate with and assist the commission of any other state in obtaining such records as may be necessary to the administration of any similar act of such state. (1937, c. 22, s. 18.)

§ 4930(19). Form and provisions of compact.—The compact referred to in section 4930(3) shall contain the provisions shown below, subject to such alterations or amendments as shall not be in conflict with the provisions of this article, and as shall be agreed upon from time to time by the states which enter into such compact.

COMPACT

This agreement entered into this day of between the State of by, Governor; the State of by, Governor; the State of by, Governor, and the State of by, Governor, Witnesseth:

Whereas, the parties hereto have each enacted a state statute providing for the regulation and control of the production and sale of tobacco in the states, and providing for the protection of the producers' tobacco crops from the adversities of unfavorable weather, crop diseases, and fire; and

Whereas, it is the desire of the parties uniformly to enforce each state statute so as to accomplish the purposes for which each act was enacted:

Now, therefore, the parties do hereby jointly and severally agree as follows:

(1) To co-operate with each other in establishing for each crop year a marketing quota for each state for each kind of tobacco referred to in the respective state statutes with respect to which such state statutes are or will be in effect for such crop year.

(2) To co-operate with each other in formulating such regulations as will assure uniform and effective administration and enforcement of each of the aforesaid state statutes.

(3) Not to depart from or fail to enforce to the best of its ability any regulation concerning the

enforcement of the state statutes without the consent of a majority of the members of the tobacco commissions of each of the several parties to this compact.

In witness whereof, the parties have hereunto set their hands as of the day of the year first above written.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

(1937, c. 22, s. 19.)

Art. 20. Boys' Road Patrol

§ 4931. Boys' road patrol authorized.—The state board of education, whose duty it shall be to appoint a director of the work of the boys' road patrol in the state of North Carolina is hereby charged with the duty of authorizing a brigade of school boys in this state to be called the Boys' Road Patrol, and to be composed of boys who attend the public schools of the state. (1915, c. 239, s. 1; 1925, c. 300, s. 1; 1937, c. 399, s. 1.)

Editor's Note.—Prior to the 1937 amendment, this section applied only to boys who attended rural public schools.

§ 4932. Duties of patrol.—The duties of such patrol to be to look after the maintenance of the road lying near the home of each member of the patrol, dragging and ditching same by the use of machinery placed in the care of the patrol by the state and county in such manner as the state board of education shall direct and prevent forest fires by extinguishing fire along the public highway, study safety rules and methods, practice research along safety lines to the end of removing hazards from the highways. (1915, c. 239, s. 2; 1925, c. 300, s. 2; 1937, c. 399, s. 2.)

Editor's Note.—The 1937 amendment added the latter part of this section relating to study of safety rules, etc.

Art. 21. Agricultural Societies and Fairs

Part 2. County Societies

§ 4944. Exhibits exempt from state and county taxes.—Any society or association organized under the provisions of this chapter, desiring to be exempted from the payment of state, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than sixty (60) days prior to the opening date of its fair, file an application with the commissioner of revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for which the exemption is asked, and also the date and place they are to be exhibited. The commissioner of revenue shall immediately refer said application to a committee consisting of the president of the North Carolina association of agricultural fairs, the commissioner of agriculture, and the director of the extension service of North Carolina State College for approval or rejection. If

the application is approved by said committee, the commissioner of revenue shall issue a permit to said society or association authorizing it to exhibit within its fair grounds and during the period of its fair, without the payment of any state, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved: Provided, however, that the commissioner of revenue shall have the right to cancel said permit at any time upon the recommendation of said committee. Any society or association failing to so obtain a permit from the commissioner of revenue or having its permit canceled shall pay the same state, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the state, shows, carnivals, or other attractions. (Rev., s. 3871; 1905, c. 513, s. 2; 1935, c. 371, s. 107.)

Editor's Note.—The 1935 amendment so changed this section that a comparison here is not practical.

Art. 23. Erosion Equipment

§ 4958(7). **Counties excepted.**—This article shall not apply to the counties of Alleghany, Alexander, Ashe, Avery, Bladen, Buncombe, Camden, Columbus, Cumberland, Davie, Gates, Haywood, Hyde, Jackson, Lincoln, Macon, Madison, Moore, New Hanover, Pamlico, Pasquotank, Rutherford, Sampson, Transylvania, Washington, Watauga, Wilkes, and Yadkin. (1935, c. 172, s. 7; 1937, c. 25.)

Editor's Note.—The 1937 amendment struck out "Union" from the list of excepted counties.

CHAPTER 87B

BARBERS

§ 5003(n). **Fees.**—The fee to be paid by applicant for examination to determine his fitness to receive a certificate of registration, as a registered apprentice, shall be five (\$5.00) dollars, and such fee must accompany his application. The annual license fee of an apprentice shall be three (\$3.00) dollars. The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration as a registered barber shall be fifteen (\$15.00) dollars, and such fee must accompany his application. The annual license fee of a registered barber shall be five (\$5.00) dollars. All licenses, both for apprentices and for registered barbers, shall be renewed as of the thirtieth day of June of each and every year, and such renewals for apprentices shall be three (\$3.00) dollars, and for registered barbers five (\$5.00) dollars. The fee for restoration of an expired certificate for registered barbers shall be seven (\$7.00) dollars, and restoration of expired certificate of an apprentice shall be four (\$4.00) dollars: Provided, the difference between the fees now being charged and the fees herein provided for shall be used exclusively for the employment of additional inspectors and the payment of their necessary expenses of inspection, it being the purpose of this law to provide as nearly as possible equal inspection throughout the state of North Carolina. The fees herein set out are not to be increased by the board of barber examiners, but said board may regulate the payment of said fees and prorate the license

fees in such manner as it deems expedient. (1929, c. 119, s. 14; 1937, c. 138, s. 4.)

Editor's Note.—The 1937 amendment increased the fees charged under this section and inserted the provision as to use of additional fees.

§ 5003(o). **Persons exempt from provisions of chapter.**

See note under § 5003(w).

§ 5003(p). **Rules for sanitation in barber shops and schools; inspection; posting rules.**

See note under § 5003(w).

§ 5003(r). **Renewal or restoration of certificates.**—Every registered barber and every registered apprentice who continues in practice or service shall annually, on or before June thirtieth of each year, renew his certificate of registration and furnish such health certificate as the board may prescribe and pay the required fee. Every certificate of registration shall expire on the thirtieth day of June in each and every year. A registered barber or a registered apprentice whose certificate of registration has expired may have his certificate restored immediately upon paying the required restoration fee and furnishing health certificate prescribed by the board: Provided, however, that registered barber or registered apprentice whose certificate has expired for a period of three years shall be required to take the examination prescribed by the state board of barber examiners, and otherwise comply with the provisions of chapter one hundred nineteen of the Public Laws of one thousand nine hundred twenty-nine [§ 5003(a) et seq.] before engaging in the practice of barbering. (1929, c. 119, s. 18; 1937, c. 138, s. 5.)

Editor's Note.—The 1937 amendment added the provisions as to furnishing health certificate and taking examination.

§ 5003(u). **Misdemeanors.**—Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars, nor more than fifty (\$50.00) dollars, or thirty days in jail or both:

1(a). The violation of any of the provisions of section 5003(e).

1(b). The refusal of any owner or manager to permit any member of the board, its agents, or assistants to enter upon and inspect any barber shop, or barber school, or any other place where barber service is rendered, at any time during business hours.

7. The violation of the reasonable rules and regulations adopted by the state board of barber examiners for the sanitary management of barber schools. (1929, c. 119, s. 21; 1933, c. 95, s. 1; 1937, c. 138, s. 6.)

Editor's Note.—The 1937 amendment inserted the words "or thirty days in jail or both" in the first paragraph, and struck out the words "wilful and continued" formerly appearing before the word "violation" in subsection 7. It also inserted subsections 1(a) and 1(b).

Subsections (1), (2)-(6), not being affected by the amendment, are not set out.

§ 5003(w): Repealed by Public Laws 1937, c. 138, s. 1.

Editor's Note.—Public Laws 1937, c. 138, s. 1, provides: "Section twenty-three of chapter one hundred nineteen of the Public Laws of one thousand nine hundred twenty-nine, section two of chapter thirty-two of the Public Laws of one thousand nine hundred thirty-one, and section three of chapter ninety-five of the Public Laws of one thousand nine hundred thirty-three are hereby repealed: Provided,

this act shall not apply to any person who shall perform the services of a barber without compensation."

§ 5003(w1). Chapter given state-wide application.—The provisions of this chapter, known as the State Barbers' License Law, shall apply to all persons except those persons specifically exempted under section 5003(o). (1937, c. 138, s. 2.)

§ 5003(w2). When barbers entitled to certificate of registration without examination.—The procedure for the registration of present practitioners that have not been affected by chapter one hundred nineteen of the Public Laws of one thousand nine hundred twenty-nine, chapter thirty-two of the Public Laws of one thousand nine hundred thirty-one, chapter ninety-five, of the Public Laws of one thousand nine hundred thirty-three, and chapter three hundred forty-one of the Public Laws of one thousand nine hundred thirty-five [§ 5003(a) et seq.] shall be as follows:

(a) If such person has been practicing barbering in the state of North Carolina for more than eighteen months and is actively engaged in the practice of barbering at the time this bill is enacted into law, he shall, upon making affidavit to that effect and paying the required fee to the board of barber examiners, be issued a certificate of registration as a registered barber.

(b) All persons, however, who do not make application prior to January first, one thousand nine hundred thirty-eight, shall be required to take the examination prescribed by the state board of barber examiners, and otherwise comply with the provisions of chapter one hundred and nineteen of the Public Laws of one thousand nine hundred twenty-nine, [§ 5003(a) et seq.] before engaging in the practice of barbering. (1937, c. 138, s. 3.)

§ 5003(x). Valid parts of chapter upheld. — If any section of this chapter shall be declared unconstitutional for any reason, the remainder of this chapter shall not be affected thereby. (1929, c. 119, s. 24; 1937, c. 138, s. 7.)

CHAPTER 88

BOARD OF CHARITIES

Art. 1. State Board of Charities and Public Welfare

§ 5004. Election and term of office.—There shall be elected by the general assembly, upon the recommendation of the governor, seven persons who shall be styled "The State Board of Charities and Public Welfare," and at least one of such persons shall be a woman. At the session of the general assembly for the year one thousand nine hundred and seventeen all the members of such board shall be elected, three for a term of two years, two for a term of four years, and two for a term of six years, and thereafter the term shall be six years for all. The election shall be by concurrent vote of the general assembly, and appointments to fill vacancies in the board arising from any cause whatsoever, except expiration of term, shall be made for the residue of such term by the governor. The governor shall designate the chairman of the board so selected, which chairmanship so designated may be changed as the governor may deem best to promote the efficiency of the service.

The members of the board shall serve without pay, except that they shall receive their necessary expenses: Provided, however, that the chairman of the said board, when acting as a member of the state board of allotments and appeal—established in an act of the present legislature, relating to the old age assistance and aid to dependent children—shall receive a per diem to be fixed by the director of the budget, together with actual expenses incurred in attending meetings. (Rev., s. 3913; Code, s. 2331; 1868-9, c. 170, s. 2; 1909, c. 899; 1937, c. 319, s. 1.)

Editor's Note.—The 1937 amendment inserted the fourth sentence and the proviso.

§ 5006. Powers and duties of board.—

8. To employ, by and with the approval of the governor, a trained investigator of social service problems who shall be known as the commissioner of public welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties.

(1937, c. 319, s. 2.)

Editor's Note.—The 1937 amendment inserted the words "by and with the approval of the governor" in sub-section 8 of this section. The rest of the section, not being affected by the amendment, is not set out.

Art. 2. County Boards of Charities and Public Welfare

§ 5014. County boards of charities and public welfare; appointment; duties.—From and after the ratification of this law, the county boards of charities and public welfare in the several counties of the state shall consist of three members, appointed as follows: one by the board of county commissioners of the county, one by the state board of charities and public welfare, and a third member selected by such two appointed members. In case the two members thus appointed are unable to agree on the appointment of a third member, such third member shall be appointed by the judge of the superior court residing in the district.

As soon as practicable after the ratification of this law, the respective appointments shall be made: Provided, however, that in order to secure overlapping terms of office and to give continuity of policy, at the first appointments, there shall be selected by the county commissioners one member for a period of two years and by the state board of charities and public welfare one member for a period of one year, and the third member selected in the manner aforesaid shall be for a term of three years; and at the expiration of the terms of those having a period of less than three years, their successors shall be appointed for a term of three years each, so that thereafter the term of each member of the board shall be a term of three years. No member shall be eligible to succeed himself after two successive terms as a member of a county board of welfare.

The county board of charities and public welfare shall have the duty of selecting the county superintendent of public welfare, in joint session with the board of county commissioners; they shall act in a joint advisory capacity to the county and municipal authorities in developing policies and plans in dealing with problems of dependency and delinquency, distribution of the poor funds, and social conditions generally, including co-operations with other agencies in placing indigent

persons in gainful enterprises, and shall have such other powers and duties as are prescribed by law, and particularly those set out in the laws pertaining to social security, old age assistance, and aid to dependent children. The members of the county boards of charities and public welfare shall serve without compensation. The provisions of this section shall not apply to Wake county. (1917, c. 170, s. 1; 1919, c. 46, s. 3; 1937, c. 319, s. 3.)

Editor's Note.—The 1937 amendment so changed this section that a comparison here is not practical.

§ 5015. Meetings of board.—The county boards of charities and public welfare so appointed shall meet immediately after their appointment and organize by electing a chairman. The county superintendent of public welfare, selected as hereinafter provided, shall be the executive officer of the board, and shall act as secretary. The county board shall meet at least once a month with the superintendent of public welfare and advise with him in regard to problems pertaining to his office. (1917, c. 170, s. 1; 1919, c. 46, s. 4; 1937, c. 319, s. 4.)

Editor's Note.—The 1937 amendment omitted from this section the provision relating to term of office.

§ 5016. County superintendent of public welfare; appointment; salary. — On the first Monday in June, one thousand nine hundred thirty-seven, and on the first Monday in June of odd years thereafter, it shall be mandatory for the board of county commissioners and the county board of charities and public welfare of every county in North Carolina to meet in joint session for the purpose of making the appointment of a county superintendent of public welfare, who shall be the executive officer of the board of charities and public welfare. The person selected as county superintendent of public welfare shall be qualified by character, fitness, and experience to discharge the duties thereof. The person so selected as superintendent of public welfare, after the appointment has been approved by the state board of charities and public welfare, shall begin his work on the first Monday in July, or as soon thereafter as such approval may be made. If the state board does not approve the selection, the joint board of county commissioners and county welfare department shall meet immediately and make a new selection to send to the state board for their consideration for approval: Provided, that if the person so elected shall not be approved by the state board of charities and public welfare, then the board of county commissioners and the county board of charities and public welfare shall proceed immediately to elect another person as provided above.

When in joint session for the purpose of electing the superintendent of public welfare, the members of the board of county commissioners and the members of the county board of charities and public welfare shall vote as members of one body. In case of a tie vote, the matter shall be referred for decision to the judge of the superior court resident in the district. A joint session of the two boards shall be held at any time on the call of the chairman of the commissioners for the purpose of discussing the work relating to the office; and a superintendent may be dismissed by joint action for proven unfitness or failure in the performance of duty and a successor elected.

The county superintendent of public welfare shall receive such salary as may be determined upon by the board of county commissioners, either at the time of his appointment or at such time as they may be in regular session or a called session for the purpose. The salary shall be sufficient to secure the services of a well-qualified person. The salary so fixed shall be paid by the counties respectively: Provided, that in counties where financial conditions render it urgently necessary the state board may cause to be paid, out of any state or federal fund available for the purpose, such portion of the salary of the superintendent of welfare of any county as, in the discretion of the state board, may be necessary. Levy of taxes for the special purpose of payment of the salary of the county superintendent of welfare is hereby authorized and directed. The provisions of this section shall not apply to Wake county. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5.)

Editor's Note. — The 1937 amendment so changed this section that a comparison here is not practical.

Art. 3. Division of Public Assistance

§ 5018(1). Division of public assistance created. — There is hereby created in the state board of charities and public welfare a division of public assistance, including (a) assistance to aged needy persons, and (b) aid to dependent children, as administered under authority of this article. (1937, c. 288, s. 1.)

§ 5018(2). Director of public assistance. — As soon as practicable after the ratification of this article, the commissioner of welfare, with the advice and approval of the governor, shall employ a whole-time executive to be known as "director of public assistance." Such director, under the authority and supervision of the commissioner of welfare, shall have charge of the administration of the division herein created, and shall actively direct its affairs; and shall perform such other duties as may be required of him by the rules and regulations adopted by the state board. He shall see that this article is properly administered, that the requirements thereof are carried out in a timely and orderly manner, that administration of this division shall be kept at all times properly coordinated and efficiently maintained in agreement with other agencies of the state and with the federal government; and shall perform such other duties as are customary in his position.

The director of public assistance shall receive such salary and compensation as may be fixed by the director of the budget; and his tenure of office shall be such as may be fixed by rules and regulations of the department relative thereto and approved by the governor, subject to termination when, in the opinion of the governor and the commissioner of welfare, the public interest may demand it. (1937, c. 288, s. 2.)

TITLE I.

Old Age Assistance

§ 5018(3). Establishment of relief. — The care and relief of aged persons who are in need and who are unable to provide for themselves is a

legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of state concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the state may equitably enjoy, and with due regard for other necessary objects of public expenditure, a state-wide system of old age relief is hereby established, to operate uniformly throughout the state and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the state, and each and every county thereof, and, whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of old age assistance, as defined and provided for in this article. (1937, c. 288, s. 3.)

For article discussing social security, see 15 N. C. Law Rev., No. 4, p. 369.

§ 5018(4). Definitions.—As used in this article, “state board” shall mean the state board of charities and public welfare, established by chapter eighty-eight, Consolidated Statutes of North Carolina.

“The county board of welfare” shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modification as may be made by law.

“Applicant” shall mean any person who has applied for relief under this title.

“Recipient” shall mean any person who has received assistance under the provisions of this title.

“Assistance” as used under this title means the money payments to needy aged persons.

“Deputies” and “supervisors” shall mean such persons as may be designated and appointed by the state board to exercise its power and duty of supervision under this article. (1937, c. 288, s. 4.)

§ 5018(5). Acceptance of federal grants. — The provisions of the Federal Social Security Act, relating to grants in aid to the state for old age assistance and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 5.)

§ 5018(6). Eligibility. — Assistance shall be granted under this article to any person who:

(a) Is sixty-five years of age and over;

(b) Is a citizen of the United States;

(c) Has not sufficient income, or other resources, to provide a reasonable subsistence compatible with decency and health;

(d) Is not an inmate of any public institution at the time of receiving assistance. An inmate of

such institution may, however, make application for such assistance, but the assistance, if allowed, shall not begin until after he ceases to be an inmate.

(e) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years prior to the filing of application for assistance pursuant to the provisions of this article.

(f) Has been a resident of this state five out of the nine years preceding his application and for one year immediately preceding the same. Residents of the state who have not resided in any one county for the one year period necessary to acquire a settlement therein shall, if otherwise eligible, receive assistance out of the state appropriation to the full amount of the benefits awarded. Eligibility of such persons upon application shall be determined as in other cases and reported to the state board of allotments and appeal.

Eligibility of applicants to receive benefits under this title, and the amount of assistance given, and such other conditions of award as it may be necessary to determine shall be determined in the manner hereinafter set out.

The amount of assistance which any person shall receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations made by the state board; and shall be sufficient when added to all other income and support of recipients to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding thirty dollars (\$30.00) per month or three hundred sixty dollars (\$360.00) during one year; and of this not more than fifteen dollars (\$15.00) per month nor more than one hundred eighty dollars (\$180.00) in one year shall be paid out of state and county funds. (1937, c. 288, s. 6.)

§ 5018(7). State old age assistance fund. — A fund shall be created to be known as “The State Old Age Assistance Fund.” This fund shall be created by appropriations made by the state from its ordinary revenues and such grants as may be made for old age assistance under the Federal Social Security Act. Said fund shall be used exclusively for the relief of aged persons coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the state for such purpose shall be supplemented by the amount provided under the Federal Social Security Act for old age assistance and such further amount as the state may appropriate for the administration of this article. From said fund there shall be paid as hereinafter provided three-fourths of the benefit payments to aged persons in accordance with the provisions hereof, and the other one-fourth of said payments shall, subject to the provisions of section 5018(60), be provided by the several counties of the state as hereinafter required. The cost of administering the provisions of this title shall be, in part, paid from said fund in accordance with section 5018(24). (1937, c. 288, s. 7.)

§ 5018(8). State appropriation. — At its present

session, and biennially thereafter, the general assembly shall appropriate out of its ordinary revenues, for the use of such fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the aged persons coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the state to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 8.)

§ 5018(9). County fund.—Annually, at the time other taxes are levied in each of the several counties of the state, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner thereafter provided, to supplement the state and federal funds available for expenditure in said county for old age assistance. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 9.)

§ 5018(10). Appropriations not to lapse. — No appropriation made for the purposes of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article. (1937, c. 288, s. 10.)

§ 5018(11). Custody and receipt of funds.—The treasurer of the state of North Carolina is hereby made ex officio treasurer of the State Old Age Assistance Fund herein established, including therein such grants in aid for old age assistance as may be received from the federal government for administration and distribution in this state; and the said treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The treasurer shall keep the funds in a separate account, to be known as the "State Old Age Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other state funds. The said fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 11.)

§ 5018(12). General powers and duties of department of charities and public welfare. — The powers and duties of the state board of charities and public welfare, established under Article XI, section seven, of the Constitution of North Carolina, and chapter eighty-eight of the Consolidated Statutes of North Carolina, and of the office of commissioner of welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the state board of charities and public welfare, through the commissioner of welfare as the executive head of the department, is hereby empowered to organize the department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire department shall be co-ordi-

nated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 12.)

§ 5018(13). Certain powers and duties of state board of charities and public welfare.—The state board shall:

(a) Supervise the administration of assistance to the needy aged under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the state board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Establish minimum standards for personnel employed by the state and county boards in the administration of this article, and make necessary rules and regulations to maintain such standards;

(d) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(e) Co-operate with the federal government in matters of mutual concern pertaining to assistance to the needy aged, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(f) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(g) Publish an annual report and such interim reports as may be necessary. (1937, c. 288, s. 13.)

§ 5018(14). Certain powers and duties of local boards—county welfare boards. — The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the state board, and in accordance with the rules and regulations prescribed by said state board.

The county boards of welfare shall:

(a) Report to the state board at such times and in such manner and form as the state board may from time to time direct;

(b) Submit to the state board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the state board. Make and report to the state board and to the county board of commissioners such investigation as may be required in order that said state board and boards of county commissioners may be fully informed as to the assistance required by aged persons coming within the eligibility provisions of this article, and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them

under this article or by proper rules and regulations made by the state board under authority thereof. (1937, c. 288, s. 14.)

§ 5018(15). Application for assistance; determination therein.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the state board, which is required to furnish forms for such applications, and shall be verified by the oath of the applicant. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the state board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of applications as may be necessary. The application shall contain a statement of the amount of property, both real and personal, in which the applicant has an interest, and of all income which he may have at the time of filing the application, and shall contain such other information as may be required by the rules and regulations of the state board. One copy of the application shall be forwarded to the state board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the applicant, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the state board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation, the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed thirty dollars (\$30.00) per month or three hundred sixty dollars (\$360.00) in one year, and there shall not be paid thereupon out of state and county funds more than fifteen dollars (\$15.00) per month or more than one hundred eighty dollars (\$180.00) in one year. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in case of other county funds.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application or granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the state board of allotments and appeal. All awards and applications on which they

are based shall be open to public inspection. (1937, c. 288, s. 15.)

§ 5018(16). Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deems that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the state board of allotments and appeal. (1937, c. 288, s. 16.)

§ 5018(17). Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, s. 17.)

§ 5018(18). State board of allotments and appeal. — For the purpose of making allotment of state and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, there shall be created within the state board of charities and public welfare and as an agency of said board, subject to its supervision and control by rules and regulations adopted by it, a body to be known as "The State Board of Allotments and Appeal," consisting of three members as follows:

The chairman of the state board of charities and public welfare;

The commissioner of welfare;

The director of public assistance, established by this article; all of whom shall be ex officio members of the state board of allotments and appeal. The chairman of the state board of charities and public welfare shall be the chairman of the board of allotments and appeal.

If an application is not acted upon by the county welfare board within thirty days, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the board of allotments and appeal in the manner and form prescribed by the said board of allotments and appeal. The board of allotments and appeal shall, upon receipt of such an appeal, give the applicant or recipient, the board of county commissioners and the county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the board upon such evidence as may be pertinent or proper; and the board of allotments and appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare or the board of county commissioners, as in the judgment of the board of allotments and appeal may be just and proper.

Upon any appeal from the board of county commissioners or county board of welfare, it shall be the duty of such board to forward to the board of allotments and appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners or county board of welfare, and such papers and documents or other matter as may be required under the rules of the state board of allotments and appeal, or under its order in the particular matter.

When the state board of allotments and appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and county board of welfare. The decision of the state board of allotments and appeal shall be final.

The state board of allotments and appeal may also, on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare, and may consider any application upon which a decision has not been made within thirty days. The state board of allotments and appeal may make such additional investigation as it may deem necessary in all cases, and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the state board of allotments and appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state board of allotments and appeal. All decisions of the state board of allotments and appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and county board of welfare.

The state board may authorize hearings of appeals in any county by other representatives selected by said board, subject to final determination by the state board of allotments and appeal. (1937, c. 288, s. 18.)

§ 5018(19). Periodic reconsideration and changes in amount of assistance. — All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the state board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning old age assistance and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient, and a copy of such notice shall be sent to the state board and board of county commissioners. Such action on the part of the county board shall be subject to review by the state board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom

to the state board of allotments and appeal as in cases of original awards. (1937, c. 288, s. 19.)

§ 5018(20). Removal to another county. — Any recipient who moves to another county in this state shall be entitled to receive assistance in the county to which he has moved, and the board of county commissioners of the county from which he has moved shall transfer all necessary records relating to the recipient to the county board of commissioners of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, not in excess of amount paid before removal, and thereafter assistance shall be paid by the county to which such recipient has moved.

In the event that a resident of this state has not lived in any county of the state for the twelve months period necessary to acquire a settlement therein, nevertheless, if otherwise eligible, such resident shall be allowed assistance upon application to the board of welfare of the county in which he has been domiciled, in the same manner as assistance is allowed to persons in the county who have acquired a settlement therein; but such allowance of assistance shall be paid entirely out of the State Old Age Assistance Fund, without participation of the county therein; and in allocating funds to the county for the purpose of disbursement to recipients under this article, the state board of allotments and appeal is authorized and empowered to reserve out of such allocations and to transmit to the counties concerned a sufficient amount of the state fund to provide for disbursement to such residents who have not acquired settlement in any county. (1937, c. 288, s. 20.)

§ 5018(21). Procedure preliminary to allotments and county taxation; investigation and report. — It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning aged persons in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of June, one thousand nine hundred thirty-seven, and thereafter on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the state board of allotments and appeal may require. Such reports shall be made on forms furnished by the state board, or in compliance with the rules and regulations of said state board. A copy thereof shall be immediately forwarded to the state board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purposes of this article for the ensuing fiscal year, and, separately stated,

the amount necessary to be raised by county taxation. The board of county commissioners shall, on or before the first day of June, one thousand nine hundred thirty-seven, and thereafter on or before the first day of May, make a report to the state board of allotments and appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the board of allotments and appeal may require. (1937, c. 288, s. 21.)

§ 5018(22). Allocation of funds. — As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the state board of allotments and appeal shall proceed to ascertain and determine the amount of state and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The board shall, at the same time, determine the amount to be raised in each of the respective counties by taxation to supplement the state and federal funds allotted to such county. The allotment of state and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in section 5018(60).

The determination of such amount by the board of allotments and appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the board of allotments and appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article according to the manner and procedure authorized for disbursement of county funds, but only to persons whose eligibility or right to receive the same has been finally approved. (1937, c. 288, s. 22.)

§ 5018(23). Administration expenses. — From the appropriation made by the state for old age assistance, the state board of allotments and appeal shall, with the approval of the director of the budget, allocate and expend such part thereof as shall be required to pay the costs of administration of this article by the state board of charities and public welfare, as necessarily incurred by said board in its own administrative and supervisory duties under the provisions of this article, including the administrative expenses necessarily incurred by its agency, the state board of allotments and appeal.

The state board of allotments and appeal shall annually allocate to the several counties of the state, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal

government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of this article by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, one-half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for the purpose of carrying out the provisions of this article. The other half of said county administrative expenses shall be paid by the respective counties. The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses. (1937, c. 288, s. 23.)

§ 5018(24). Transfer of state and federal funds to the counties.—The state old age assistance fund shall be drawn out on the warrant of the state auditor, issued upon order of the state board, evidenced by the signature of the commissioner of welfare. Quarterly, and oftener, if in the sound judgment of the state board it may be necessary, the state board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds, for a reasonable period. Before transferring said funds the state board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of state funds to be so transferred. The state board of allotments and appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county old age assistance fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the state board may require such additional protection to such funds as they may deem proper.

When in the judgment of the state board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the state board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When

in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the state board may demand and require that the funds raised by taxation in any county be transmitted to the treasurer of the state, subject to disbursement under such rules and regulations as the state board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the state treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 24.)

§ 5018(25). Accounts and reports from county officers.—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the state board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the state board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the state board and its authorized auditors, supervisors and deputies. (1937, c. 288, s. 25.)

§ 5018(26). Further powers and duties of state board.—The state board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 26.)

§ 5018(27). Fraudulent acts made misdemeanor.—Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a wilfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled; and whoever aids or abets in buying or in any way disposing of the property, either real or personal, of a recipient of assistance with the intent to defeat the purposes of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 27.)

§ 5018(28). Limitations of article.—All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 28.)

§ 5018(29). Short title.—This title may be cited as the "Old Age Assistance Act." (1937, c. 288, s. 30.)

TITLE II

Aid to Dependent Children

§ 5018(30). Establishment of relief.—The care and relief of dependent children who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of state concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the state may equitably enjoy, and with due regard for other necessary objects of public expenditure, a statewide system of aid to dependent children is hereby established, to operate uniformly throughout the state and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the state, and each and every county thereof, and whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of aid to dependent children as defined and provided for in this article. (1937, c. 288, s. 31.)

§ 5018(31). Definitions.—As used in this article, "state board" shall mean the state board of charities and public welfare, established by chapter eighty-eight, Consolidated Statutes of North Carolina.

"The county board of welfare" shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modifications as may be made by law.

"Applicant" shall mean any person who has applied for relief for dependent children under this title.

"Recipient" shall mean any person who has received assistance for dependent children under the provisions of this title.

"Assistance" as used under this title means the money payments for aid to dependent children. (1937, c. 288, s. 32.)

§ 5018(32). Acceptance of federal grants.—The provisions of the Federal Social Security Act, relating to grants in aid to the state for aid to dependent children, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 33.)

§ 5018(33). Amount of relief.—The maximum amount to be allowed per month under this arti-

cle shall not exceed eighteen dollars (\$18.00) for one child and twelve dollars (\$12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars (\$65.00), except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars (\$65.00) per month would be insufficient to secure the purpose above set forth. (1937, c. 288, s. 34.)

§ 5018(34). Dependent children defined.—The term “dependent child” as used in this article shall mean a child under sixteen years of age who is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one or more of such relatives as his or their own home; who has resided in the state of North Carolina for one year immediately preceding the application for aid; or who was born within the state within one year immediately preceding the application; if the mother has resided in the state for one year immediately preceding the birth, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support: Provided, that in all cases of desertion every effort shall be made in compliance with provisions of Consolidated Statutes four thousand four hundred forty-seven through four thousand four hundred fifty (a), inclusive, to apprehend the parent and charge him with the support of the said child. (1937, c. 288, s. 35.)

§ 5018(35). Eligibility.—To be eligible to receive aid for a dependent child or children as hereinbefore defined in section 5018(34), the said father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in whose own home the said dependent child resides shall maintain a safe and proper home for himself, or themselves, and said dependent child or children. (1937, c. 288, s. 36.)

§ 5018(36). State aid to dependent children fund.—A fund shall be created to be known as “The State Aid to Dependent Children Fund.” This fund shall be created by appropriations made by the state from its ordinary revenues and such grants as may be made for aid to dependent children under the Federal Social Security Act. Said fund shall be used exclusively for the relief of dependent children coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the state for such purpose shall be supplemented by the amount provided under the Federal Social Security Act for aid to dependent children and such further amount as the state may appropriate for the administration of this article. From said fund there shall be paid as hereinafter provided two-thirds of the benefit payments to dependent children in accordance with the provisions hereof, the other one-third of said payments shall, subject to the provisions of section 5018(60), be provided by the several counties of the state as hereinafter required. The cost of administering the provisions of this title shall be, in part,

paid from said funds in accordance with section 5018(53).

In the event that the Federal Social Security Act is amended by providing for a larger percentage of contributions to said fund, the provisions herein made shall be construed to accept such additional grants, and the amounts to be provided for aid to dependent children by state and counties shall be adjusted proportionately. (1937, c. 288, s. 37.)

§ 5018(37). State appropriation.—At its present session, and biennially thereafter, the general assembly shall appropriate out of its ordinary revenues, for the use of such fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the dependent children coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the state to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 38.)

§ 5018(38). County fund.—Annually, at the time other taxes are levied in each of the several counties of the state, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the state and federal funds available for expenditure in said county for aid to dependent children. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 39.)

§ 5018(39). Appropriations not to lapse.—No appropriation made for the purpose of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article. (1937, c. 288, s. 40.)

§ 5018(40). Custody and receipt of funds.—The treasurer of the state of North Carolina is hereby made ex officio treasurer of the state aid to dependent children fund herein established, including therein such grants in aid to dependent children as may be received from the federal government for administration and distribution in this state; and the said treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The treasurer shall keep the funds in a separate account, to be known as the state aid to dependent children fund, and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other state funds. The said fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 41.)

§ 5018(41). General powers and duties of department of charities and public welfare.—The powers and duties of the state board of charities and public welfare established under Article XI, section seven, of the Constitution of North Carolina, and chapter eighty-eight of the Consolidated Statutes of North Carolina, and of the office of

commissioner of welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the state board of charities and public welfare, through the commissioner of welfare as the executive head of the department, is hereby empowered to organize the department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 42.)

§ 5018(42). Certain powers and duties of state board of charities and public welfare.—The state board shall:

(a) Supervise the administration of assistance to dependent children under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the state board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Establish minimum standards for personnel employed by the state and county boards in the administration of this article and make necessary rules and regulations to maintain such standards;

(d) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(e) Co-operate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(f) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(g) Publish an annual report and such interim reports as may be necessary. (1937, c. 288, s. 43.)

§ 5018(43). Certain powers and duties of local boards—county welfare boards.—The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the state board, and in accordance with the rules and regulations prescribed by said state board.

County boards of welfare shall:

(a) Report to the state board at such times and in such manner and form as the state board may from time to time direct;

(b) Submit to the state board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the state board. Make and re-

port to the state board and to the county board of commissioners such investigation as may be required in order that the said state board and boards of county commissioners may be fully informed as to the assistance required by dependent children coming within the eligibility provisions of this article; and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them under this article or by proper rules and regulations made by the state board under authority thereof. (1937, c. 288, s. 44.)

§ 5018(44). Application for assistance; determination thereon.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the state board, which is required to furnish forms for such applications, and shall be verified by the oath of the applicant. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the state board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of the applications as may be necessary. One copy of the application shall be forwarded to the state board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the children for whom application is made, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the state board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation, and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed eighteen dollars (\$18.00) for one child and twelve dollars (\$12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars (\$65.00) except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars (\$65.00) per month would be insufficient to secure the purposes above set forth. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in the case of other county funds.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application for granting assistance, stat-

ing, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the state board of allotments and appeal. (1937, c. 288, s. 45.)

§ 5018(45). Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deem that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the state board of allotments and appeal. (1937, c. 288, s. 46.)

§ 5018(46). Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, s. 47.)

§ 5018(47). State board of allotments and appeal.—For the purpose of making allotment of state and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, the state board of allotments and appeal, created under section 5018(18), shall as an agency of the state board have complete and final jurisdiction. If an application is not acted upon by the county welfare board within thirty days or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the board of allotments and appeal in the manner and form prescribed by the said board of allotments and appeal. The board of allotments and appeal shall, upon receipt of such an appeal, give the applicant or recipient and the board of county commissioners and county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the board upon such evidence as may be pertinent or proper; and the board of allotments and appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare (and) the board of county commissioners, as in the judgment of the board of allotments and appeal may be just and proper.

Upon any appeal from the board of county commissioners, it shall be the duty of such board to forward to the state board of allotments and appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners, and such papers and documents or other matter as may be

required under the rules of the board of allotments and appeal, or under its order in the particular matter.

When the state board of allotments and appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and the county board of welfare. The decision of the state board of allotments and appeal shall be final.

The state board of allotments and appeal may also on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare and may consider any application upon which a decision has not been made within thirty days. The state board of allotments and appeal may make such additional investigation as it may deem necessary in all cases and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the state board of allotments and appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the board of allotments and appeal. All decisions of the state board of allotments and appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and the county board of welfare.

The state board may authorize hearings of appeals in any county by other representatives selected by said boards, subject to final determination by the state board of allotments and appeal. (1937, c. 288, s. 48.)

§ 5018(48). Periodic reconsideration and changes in amount of assistance.—All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the state board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning aid to dependent children and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient and a copy of such notice shall be sent to the state board and board of county commissioners. Such action on the part of the county board shall be subject to review by the state board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the state board of allotments and appeal as in cases of original awards. (1937, c. 288, s. 49.)

§ 5018(49). Removal to another county.—Any resident who moves to another county and continues to have such dependent children in custody in this state shall be entitled to receive assistance in

the county to which he has moved, and the board of county commissioners of the county from which he has moved shall transfer all necessary records relating to the recipient to the county board of commissioners of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved.

In the event that the applicant and the dependent children are residents of this state and have not lived in any county of the state for the twelve months' period necessary to acquire a settlement therein, nevertheless, if otherwise eligible, such residents shall be allowed assistance upon application to the board of welfare of the county in which he has been domiciled, in the same manner as assistance is allowed to persons in the county who have acquired a settlement therein; but such allowance of assistance shall be paid entirely out of the state aid to dependent children fund, without participation of the county therein; and in allocating funds to the county for the purpose of disbursement to recipients under this article, the state board of allotments and appeal is authorized and empowered to reserve out of such allocations and to transmit to the counties concerned a sufficient amount of the state fund to provide for disbursement to such residents who have not acquired settlement in any county. (1937, c. 288, s. 50.)

§ 5018(50). Procedure preliminary to allotments and county taxation; investigation and report.—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning dependent children in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of June, one thousand nine hundred thirty-seven, and thereafter on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the state board of allotments and appeal may require. Such reports shall be made on forms furnished by the state board or in compliance with the rules and regulations of said state board. A copy thereof shall be immediately forwarded to the state board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purpose of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, on or before the first day of April, make a report to the state board of allotments and appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the board

of allotments and appeal may require. (1937, c. 288, s. 51.)

§ 5018(51). Allocation of funds. — As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the state board of allotments and appeal shall proceed to ascertain and determine the amount of state and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The board shall, at the same time, determine the amounts to be raised in each of the respective counties by taxation to supplement the state and federal funds allotted to such county. The allotment of state and federal funds to any county shall not exceed twice the amount to be raised in said county by local taxation, except as provided in section 5018(60).

The determination of such amount by the board of allotments and appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the board of allotments and appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article according to the manner and procedure authorized for disbursement of county funds, but only to persons whose eligibility or right to receive the same has been approved. (1937, c. 288, s. 52.)

§ 5018(52). Administration expenses. — From the appropriation made by the state for aid to dependent children, the state board of allotments and appeal shall, with the approval of the director of the budget, allocate and expend such part thereof as shall be required to pay the costs of administration of this article by the state board of charities and public welfare as necessarily incurred by said board in its own administrative and supervisory duties under the provisions of this article, including the administrative expenses necessarily incurred by its agency, the state board of allotments and appeal.

The state board of allotments and appeal shall annually allocate to the several counties of the state, in accordance with the total amount of benefit payments to be paid in each county for aid to dependent children therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of this article by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each

county. Said determination shall be made on or before the first day of June in each year.

After being so determined, one-half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for the purpose of carrying out the provisions of this article. The other half of said county administrative expenses shall be paid by the respective counties. The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice, it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payments of such part of such county's administrative expenses. (1937, c. 288, s. 53, c. 405.)

§ 5018(53). Transfer of state and federal funds to the counties.—The aid to dependent children fund shall be drawn out on the warrant of the state auditor, issued upon order of the state board, evidenced by the signature of the commissioner of welfare. Quarterly, and oftener, if in the sound judgment of the state board it may be necessary, the state board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds for a reasonable period. Before transferring said funds the state board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of state funds to be so transferred. The state board of allotments and appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-third of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county aid to dependent children fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the state board may require such additional protection to such funds as they may deem proper.

When in the judgment of the state board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the state board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the state board may demand and require that the funds raised by taxation in any county be transmitted to the treasurer of the state, sub-

ject to disbursement under such rules and regulations as the state board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the state treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 54.)

§ 5018(54). Accounts and reports from county officers.—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the state board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the state board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the state board and its authorized auditors, supervisors, and deputies. (1937, c. 288, s. 55.)

§ 5018(55). Further powers and duties of state board.—The state board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 56.)

§ 5018(56). Fraudulent acts made misdemeanor.—Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain by means of wilfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 57.)

§ 5018(57). Limitations of article.—All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 58.)

§ 5018(58). Short title.—This title may be cited as the "Aid to Dependent Children Act." (1937, c. 288, s. 60.)

§ 5018(59). Equalizing fund.—The state board of allotments and appeal is authorized and directed to set apart and reserve out of the appropriation authorized to be made by the state under section 5018(8), relating to old age assistance, and under section 5018(38), relating to assistance to depend-

ent children, such an amount of said funds appropriated by the state to the respective funds as shall be found by the state board of allotments and appeal to be necessary for the purpose of equalizing the burden of taxation in the several counties of the state, and the benefits received by the recipients of awards under this article, and such amount shall be expended and disbursed solely for the use and benefit of needy aged persons and dependent children coming within the eligibility provisions of this article. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the state board of allotments and appeal, producing, as far as practicable, a just and fair distribution thereof: Provided, however, that no county shall be entitled to share in such equalizing fund unless the rate of tax necessary to be levied in such county for the purposes of this article is in excess of ten cents on the one hundred dollar valuation of taxable property therein: Provided further, the state board of allotments and appeal shall not allot to any county from such equalizing fund more than three-fourths of the cost to such county in excess of the amount produced in such county by a levy and collection of a tax rate of ten cents on the one hundred dollar valuation of taxable property therein.

After determining the amount to be allotted to any county from such equalizing fund, the state board of allotments and appeal shall determine the amount to be raised in such county by taxation to supplement the state and federal funds allotted to said county as in this article otherwise provided, and it shall be mandatory upon the boards of county commissioners in the several counties to annually levy taxes in accordance therewith. (1937, c. 288, s. 62.)

General Provisions

§ 5018(60). Organization; appointment of agencies; employment.—The state board shall have opportunity to set up such organization as may in its judgment be deemed proper to secure the economic and efficient administration of this article, not inconsistent with other provisions hereof. It may delegate such powers as may be lawfully delegated to such persons and agencies as will expedite the prompt execution of the duties of the board in ministerial matters; may appoint auditors, accountants, supervisors, and deputies, and other agents to aid it in its supervisory powers and to secure the proper care of the funds and administration of the law; and may employ clerical and other assistance. Except as herein otherwise provided, the salaries and compensation paid to the personnel shall be fixed by the budget commission, and the number of salaried persons and employees shall be subject to the approval of the budget commission. The organization shall likewise be such as to meet the approval of the Federal Social Security Authority in charge of the old age assistance.

The board is further authorized to pay ordinary expenses incident to administration, and to fix and pay per diem compensation to members of boards to whom new duties have been given and of whom additional service is required under this article.

Such compensation shall be subject to the approval of the director of the budget. (1937, c. 288, s. 63.)

§ 5018(61). County funds; how provided.—Wherever in this article provisions are made requiring the several counties to annually levy or annually levy and collect taxes to provide for such amounts as such counties are required to pay for old age assistance, or for aid to dependent children, or for the cost of administration, such provisions shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1937, c. 288, s. 63½.)

§ 5018(62). Termination of federal aid.—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become or be in force unless and until the governor of the state of North Carolina has issued a proclamation, duly attested by the secretary of state of the state of North Carolina, to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the state funds on hand shall be converted into the general fund of the state for such use as may be authorized by the director of the budget, and the county funds accumulated by the provisions of this article in the respective counties of the state shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 288, s. 63½-A.)

Art. 4. Home Boarding Fund

§ 5018(63). State boarding home fund created.

—The general assembly of North Carolina at this session shall make an appropriation to the state board of charities and public welfare for the purpose of providing aid for needy and dependent children and paying their necessary subsistence in boarding homes. The state board of charities and public welfare, from said appropriation, shall maintain a fund to be known and designated as the state boarding home fund, from which said fund there shall be paid, in accordance with the rules and regulations adopted by the state board of charities and public welfare, the amount necessary to provide homes for the needy and dependent children coming within the eligibility provisions of this article. (1937, c. 135, s. 1.)

§ 5018(64). No benefits to children otherwise provided for.—No needy or dependent child shall be eligible for the benefits provided in this article if such child is eligible for benefits provided by the act of the general assembly of one thousand nine hundred and thirty-seven, known as the "Aid to Dependent Children Act." (1937, c. 135, s. 2.)

§ 5018(65). Administration of fund by state board of charities and public welfare.—From the fund so provided, the state board of charities and public welfare may provide for payment of the necessary costs of keeping needy and dependent children in suitable boarding homes, including the children committed to the state board of charities and public welfare under the provisions of Consol-

idated Statutes, section five thousand and forty-seven, provided such children so committed to such state board of charities and public welfare are ineligible for assistance under the "Aid to Dependent Children Act" hereinbefore referred to. Said fund shall be expended under the rules and regulations adopted by the state board of charities and public welfare. (1937, c. 135, s. 3.)

CHAPTER 89 CEMETERIES

Art. 4. Removal of Graves

§ 5030. **Removal to enlarge or erect churches, etc.**—In those cases where any church authorities desire to enlarge a church building and/or erect a new church and/or parish house and/or parsonage and where it becomes necessary or expedient to remove certain graves in order to secure the necessary room for such enlargement, it shall be lawful for such church authorities after thirty days' notice to the relatives of deceased, if any are known, and if none are known, then after notice posted at the church door for a like time, to remove such graves to a suitable plat in the church cemetery, or in another cemetery, due care being taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal.

(1937, c. 3.)

Editor's Note.—The 1937 amendment inserted the words "and/or erect a new church and/or parish house and/or parsonage" in the first sentence. The rest of the section, not being affected by the amendment, is not set out.

CHAPTER 90 CHILD WELFARE

Art. 1. Child Labor Regulations

§§ 5032-5034: Repealed by Public Laws 1937, c. 317, s. 22.

§ 5038(1). **Minimum age.** — No minor under sixteen years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: Provided, that minors between fourteen and sixteen years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law; and Provided, that boys fourteen years of age and over, and boys twelve years of age and over securing a certificate from the department of labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of section 5038-(8) relating to employment of minors in street trades and to such rules and regulations as may be provided under section seven thousand three hundred ten (h) of the Consolidated Statutes of North Carolina. Nothing in this law shall be construed to apply to the employment of a minor engaged in domestic or farm work performed under the direction or authority of the minor's parent or guardian. (1937, c. 317, s. 1.)

§ 5038(2). **Hours of labor.**—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with

any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that no girl between sixteen and eighteen years of age shall be so employed, permitted, or allowed to work before six o'clock in the morning or after nine o'clock in the evening of any day; and Provided further, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of section 5038(8) relating to employment of minors in street trades, and to such rules and regulations as may be provided under section seven thousand three hundred ten (h) of the Consolidated Statutes of North Carolina: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the state commissioner of labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2.)

§ 5038(3). **Lunch period.**—No minor under sixteen years of age shall be employed or permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work. (1937, c. 317, s. 3.)

§ 5038(4). **Posting of hours.**—Every employer shall post and keep conspicuously posted in the establishment wherein any minor under eighteen is employed, permitted, or allowed to work, a printed abstract of this law and a list of the occupations prohibited to such minors, to be furnished by the state department of labor. (1937, c. 317, s. 4.)

§ 5038(5). **Time records.** — Every employer shall keep a time-book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall

be open to the inspection of the state department of labor. (1937, c. 317, s. 5.)

§ 5038(6). Hazardous occupations prohibited for minors under sixteen.—No minor under sixteen years of age shall be employed, permitted or allowed to work on or in connection with power-driven machinery. No minor under sixteen years of age shall be employed, permitted or allowed to work in or about or in connection with: Construction work of any kind, ship building, mines or quarries, stone cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth inch; power-driven wood-working machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crush-action, corrugating, crimping, or embossing machines, meat grinding machines, dough brakes or mixing machines in bakeries or cracker making machinery, grinding, abrasive, polishing or buffing machines: Provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery. (1937, c. 317, s. 6.)

§ 5038(7). Hazardous occupations prohibited for minors under eighteen.—No minor under the age of eighteen years shall be employed, permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under eighteen be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room. Nor shall any girl under the age of eighteen years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages.

Nor shall any minor under eighteen years of age be employed, permitted, or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the state department of labor and the said state

department of labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors. (1937, c. 317, s. 7.)

§ 5038(8). Employment of minors in street trades; sale or distribution of newspapers, etc.—No boy under fourteen years of age and no girl under eighteen years of age shall distribute, sell, expose or offer for sale newspapers, magazines, periodicals, candies, drinks, peanuts, or other merchandise in any street or public place, or exercise the trade of bootblack in any street or public place. No boy under sixteen years of age shall be employed or permitted or allowed to work at any of the trades or occupations mentioned in this section after seven p. m. or before 6 a. m., or unless he has an employment certificate issued in accordance with section 5038(9). The state commissioner of labor shall have authority to make, promulgate and enforce such rules and regulations as he may deem necessary for the enforcement of this section, not inconsistent with this law or existing law.

Nothing in this section shall be construed to prevent male persons over fourteen years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: Provided, that such persons shall not be employed nor allowed to work after eight o'clock p. m. and before five o'clock a. m., and that the hours of work and the hours in school do not exceed eight in any one day, except boys twelve years of age and over who have secured a certificate from the department of labor for the sale or distribution of newspapers, magazines or periodicals; and Provided further, that such person shall not be permitted or allowed to work more than four hours per day nor more than twenty-four hours per week: Provided further, that nothing in this law shall be construed to prevent boys over twelve years of age, upon securing a proper certificate from the department of labor, from being employed outside school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than seventy-five customers are served in one day): Provided, that such boys shall not be employed between the hours of seven o'clock p. m. and six o'clock a. m., nor for more than ten hours in any one week. (1937, c. 317, s. 8.)

§ 5038(9). Employment certificate required.—Before any minor under eighteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, the person employing such minor shall procure and keep on file an employment certificate for such minor, issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and shall procure and keep on file the employment certificate herein required. (1937, c. 317, s. 9.)

§ 5038(10). Officers authorized to issue cer-

tificates.—The employment certificate required by this law shall be issued only by county or city superintendents of public welfare in such form and under such conditions as may be prescribed by the state department of labor. (1937, c. 317, s. 10.)

§ 5038(11). Refusal and revocation of employment certificate.—The person designated to issue employment certificates may refuse to grant such certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the commissioner of labor. (1937, c. 317, s. 11.)

§ 5038(12). Method of issuing employment certificates.—The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by some one duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this law, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

(a) A duly attested transcript of the birth certificate filed according to law with a register of vital statistics, or other officer charged with the duty of recording births; or

(b) A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

(c) Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

(d) In the case none of the aforesaid proofs of age shall be obtainable, and only in such case, the issuing officer may accept the signed statement of the physician authorized to make the physical examinations required by this section, stating that, after examination, it is his opinion that the minor has attained the age required by law for the occupation in which he expects to engage. Such statement shall be accompanied by an affidavit, signed by the minor's parents or guardian, certifying to the name, date and place of birth of the minor and that the proofs of age specified in the preceding sub-divisions of this section cannot be produced.

(3) A statement of physical fitness, signed by a public health, public school or other physician assigned to this duty by the issuing officer with the approval of the state department of labor, setting forth that such minor has been thoroughly examined by such physician and that he is either physically fit to be employed in any legal occupation, or that he is physically fit to be employed under certain limitations, specified in the statement. If the statement of physical fitness is

limited, the employment certificate issued thereon shall state clearly the limitations upon its use, and shall be valid only when used under the limitations so stated. The minor shall not be charged a fee for such examination or statement of physical fitness. The method of making such examinations shall be prescribed by the state department of labor.

(4) A school record signed by the principal of the school which the minor has last attended or by some one duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the prospective employer of the minor for whom the employment certificate is issued, and such certificate shall be valid only for the employer named therein and for the occupation designated in the promise of employment. (1937, c. 317, s. 12.)

§ 5038(13). Employment certificate as evidence.—Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 13.)

§ 5038(14). Regular and vacation employment certificates.—Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employment during the school vacation and during the school term at such time as the public schools are not in session. (1937, c. 317, s. 14.)

§ 5038(15). Duties of employers in regard to employment certificates.—Every employer receiving an employment certificate shall, during the period of the minor's employment, keep such certificate on file at the place of employment and accessible to any certificate-issuing officer, attendance officer, inspector, or other person authorized to enforce this law. The failure of any employer to produce for inspection such employment certificate shall be prima facie evidence of the unlawful employment of the minor. (1937, c. 317, s. 15.)

§ 5038(16). Certificates of age.—Upon request, it shall be the duty of the officer authorized to issue employment certificates to issue to any person between the ages of eighteen and twenty-one desiring to enter employment a certificate of age upon presentation of the same proof of age as is required for the issuance of employment certificates under this law, and such certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 16.)

§ 5038(17). State supervision of the issuance of employment certificates.—The state department of labor shall prescribe such rules and regulations for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this law. It also shall supply to local issuing officers all blank

forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the state department of labor within one week after issuance. The state department of labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained. (1937, c. 317, s. 17.)

§ 5038(18). Rules and regulations. — The commissioner of labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this law as may be deemed necessary by said commissioner. (1937, c. 317, s. 18.)

§ 5038(19). Inspection and prosecutions. — It shall be the duty of the state department of labor and of the inspectors and agents of said state department of labor to enforce the provisions of this law, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said state department of labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the law, and to have access to employment certificates kept on file by the employer and such other records as may aid in the enforcement of this law. School attendance officers are likewise empowered to visit and inspect places where minors may be employed.

Any person authorized to enforce this law may require an employer of a minor for whom an employment certificate is not on file to either furnish him within ten days the evidence required for an employment certificate showing that the minor is at least eighteen years of age, or to cease to employ or permit or allow such minor to work. (1937, c. 317, s. 19.)

§ 5038(20). Penalties. — Whoever employs or permits or allows any minor to be employed or to work in violation of this law, or of any order or ruling issued under the provisions of this law, or obstructs the state department of labor, its officers or agents, or any other persons authorized to inspect places of employment under this law, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this law, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00), or imprisonment for not more than thirty days, or both such fine and imprisonment. Each day during which any violation of this law continues after notice from the state department of labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a separate and distinct offense, and the employment of any minor in violation of the law shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this law may be recovered by the state in an action for debt brought before any court of competent juris-

diction, or through criminal proceedings, as may be deemed proper. (1937, c. 317, s. 20.)

§ 5038(21). Particular laws repealed.—The following laws are superseded by this law and are hereby repealed: Public Laws of one thousand nine hundred nineteen, chapter one hundred, section seven; Public Laws of one thousand nine hundred twenty-four, chapter seventy-four (§ 5032); Public Laws of one thousand nine hundred nineteen, chapter one hundred, section six; Public Laws of one thousand nine hundred twenty-four, chapter one hundred twenty-nine, section two; Public Laws of one thousand nine hundred twenty-seven, chapter two hundred fifty-one; Public Laws of one thousand nine hundred thirty-one, chapters one hundred twenty-five and three hundred ninety-one (§ 5033); Public Laws of one thousand nine hundred nineteen, chapter one hundred, section ten; Public Laws of one thousand nine hundred twenty-four, chapter seventy-four (§ 5034); but nothing in this law shall be construed to repeal the provisions of section 5033(a). (1937, c. 317, s. 22.)

Art. 2. Juvenile Courts

§ 5039. Exclusive original jurisdiction over children.

Applied in *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

§ 5040. Juvenile courts created; part of superior court.

Editor's Note.—For act providing for appointment of assistant judge of juvenile court of Mecklenburg county, see Public Laws 1937, c. 251.

Art. 4. Aid of Needy Orphans in Homes of Worthy Mothers

§§ 5067(a)-5067(h): Repealed by Public Laws 1937, c. 288, s. 61.

The repealing act is codified as §§ 5018(1)-5018(62).

CHAPTER 91

COMMERCE AND BUSINESS IN STATE

Art. 6A. Dealers in Scrap Tobacco

§ 5126(a1). Application for license; amount of tax; exceptions.—Every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco in the state of North Carolina shall first procure from the commissioner of revenue of North Carolina a license so to do, and for that purpose shall file with the said commissioner of revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in the said business and the place or places where his, their or its principal office (if any) shall be situated; and shall pay to the said commissioner of revenue of North Carolina, to be placed in the general fund for the use of the state, an annual license tax of one thousand dollars (\$1,000.00) for each and every county in North Carolina in which the applicant proposes to engage in such business. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Any lot of parts of leaves of tobacco, or any lot in which parts of

leaves of tobacco are commingled with whole leaves of tobacco, or any other leaf or leaves of tobacco, or parts of leaves of tobacco not permitted, under the rules and regulations of tobacco warehouses, to be offered for sale at auction on tobacco warehouse floors, shall be deemed to be "scrap or untied" tobacco within the meaning and purview of this article. (1935, c. 360, s. 1; 1937, c. 414, s. 1.)

The former law (P. S. 1935, c. 360) was void for uncertainty, the statute failing to stipulate the time when the license prescribed should be paid and failing to prescribe for how long a time the license should run. *State v. Morrison*, 210 N. C. 117, 185 S. E. 674.

The former law was not a criminal statute, and a person refusing to comply with its provisions could not be charged with crime. *Id.*

§ 5126(a2). Report to commissioner of agriculture each month.—On or before the tenth day of each month every person, firm or corporation engaged in the business set forth in section one hereof shall make a report to the commissioner of agriculture of North Carolina, setting forth the number of pounds of scrap or untied tobacco purchased and the price paid therefor during the preceding month in each of the counties in which the said person, firm or corporation is doing business and also the purposes for which such scrap tobacco is bought or sold. (1935, c. 360, s. 2; 1937, c. 414, s. 2.)

§ 5126(a3). Display of license; duplicate license.—If the person, firm or corporation licensed to engage in the business aforesaid has a warehouse, office or fixed place of business, the license issued by the commissioner of revenue, as herein provided, shall be displayed in a conspicuous place in the said office, warehouse or place of business; if the said person, firm or corporation shall have no warehouse, office or fixed place of business, the said person, partner or representative of the corporation (if incorporated) engaged in such business shall carry on his person such license or a duplicate thereof, which shall be exhibited when requested or demanded by any law enforcement officer of North Carolina or any person from whom such tobacco is bought or to whom the same may be sold. A duplicate of the original license issued under this article shall be issued by the commissioner of revenue on request upon the payment of an additional license tax of five dollars (\$5.00) for each such duplicate. (1935, c. 360, s. 3; 1937, c. 414, s. 3.)

§ 5126(a4). Violation made misdemeanor.—Any person, firm or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court. (1937, c. 414, s. 4.)

§ 5126(a5). Exemptions.—Nothing in this article shall have any effect upon or apply to any stocks of leaf and scrap tobacco grown prior to the year one thousand nine hundred thirty-seven. (1937, c. 414, s. 4½.)

Art. 8. Fair Trade

§ 5126(k). Definitions.—The following terms, as used in this article, are hereby defined as follows:

(a) "Commodity" means any subject of commerce.

(b) "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(c) "Wholesaler" means any person selling a commodity other than a producer or retailer.

(d) "Retailer" means any person selling a commodity to consumers for use.

(e) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. "Person" shall not include the state of North Carolina or any of its political subdivisions. (1937, c. 350, s. 1.)

For a discussion of the act from which this article was codified, see 15 N. C. Law Rev., No. 4, p. 367.

§ 5126(l). Authorized contracts relating to sale or resale of commodities bearing trademark, brand or name.—No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others, shall be deemed in violation of any law of the state of North Carolina by reason of any of the following provisions which may be contained in such contract:

(a) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c) That the seller will not sell such commodity:

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price. (1937, c. 350, s. 2.)

§ 5126(m). Certain evasions of resale price restrictions, prohibited.—For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this article (except to the extent authorized by the said contract):

(a) The offering or giving of any article of value in connection with the sale of such commodity;

(b) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(c) The sale or offering for sale of such commodity in combination with any other commodity

shall be deemed a violation of such resale prices restriction, for which the remedies prescribed by section 5126(p) shall be available. (1937, c. 350, s. 3.)

§ 5126(n). Contracts with persons other than the owner of the brand, etc., not authorized.—No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this article, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name. (1937, c. 350, s. 4.)

§ 5126(o). Resales not precluded by contract.—No contract containing any of the provisions enumerated in section 5126(l) shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(a) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the fact is given to the public: Provided, the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;

(b) When the trade-mark, brand or name is removed or wholly obliterated from the commodity and is not used or directly or indirectly referred to in the advertisement sale thereof;

(c) When the goods are altered, second-hand, damaged or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(d) By any officer acting under an order of court.

(e) When any commodity is sold to a religious, charitable or educational organization or institution, provided such commodity is for the use of such organization or institution and not for resale. (1937, c. 350, s. 5.)

§ 5126(p). Violation of contract declared unfair competition.—Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this article, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. (1937, c. 350, s. 6.)

§ 5126(q). Exemptions.—This article shall not apply to any contract or agreement between or among producers or distributors or, except as provided in sub-division (c) of section 5126(l), between or among wholesalers, or between or among retailers, as to sale or resale prices. This article shall not apply to any prices offered in connection with or contracts or purchases made by the state of North Carolina or any of its agencies, or any of the political subdivisions of the said state. (1937, c. 350, s. 7.)

§ 5126(r). Title of article.—This article may

be known and cited as the "Fair Trade Act." (1937, c. 350, s. 10.)

CHAPTER 91A

COMMISSION FOR THE BLIND

§ 5126(1a). Additional members of commission for blind; meeting place.—In addition to the members of the North Carolina state commission for the blind, as provided in section 5126(1), there shall be three additional persons, to be appointed by the governor within thirty days after the passage of this law. The secretary of the state board of health, the director of the North Carolina employment service, and the commissioner of public welfare of North Carolina shall also be ex officio members of this commission, and their term of office shall be contemporaneous with their tenure of office as secretary of the state board of health, director of the North Carolina employment service, and commissioner of public welfare. But the three additional members, to be appointed by the governor as herein provided, one shall be appointed for a term of five years, one for a term of three years, and one for a term of one year. At the expiration of the term of any member of the commission, his successor shall be appointed for a term of five years. All meetings of the North Carolina state commission for the blind shall be held in the city of Raleigh. (1937, c. 285.)

§ 5126(5). Training schools and workshops; training outside state; sale of products.—

The commission may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the North Carolina state commission for the blind under the provisions of this chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the North Carolina state commission for the blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of this amending law, and whenever possible such funds may be matched by funds provided by the Federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16.)

Editor's Note.—The 1937 amendment struck out the last sentence of this section and inserted the above provision in lieu thereof. The rest of the section, not being affected by the amendment, is not set out.

§ 5126(12). Commission granted additional powers and duties.—Chapter fifty-three, Public Laws of nineteen hundred and thirty-five [§§ 5126(1)-5126(11)], establishing a state commission for the improvement of the condition of the blind and the prevention of blindness, be and the same hereby is amended, and it is hereby provided that, in addition to the powers and duties imposed upon the North Carolina state commission for the blind therein provided, the North Carolina state commission for the blind shall be and hereby is charged with the powers and duties hereinafter enumerated. (1937, c. 124, s. 1.)

For an article discussing social security, see 15 N. C. Law Rev., No. 4, p. 369.

§ 5126(13). Administration of assistance; ob-

jective standards for personnel; rules and regulations.—The North Carolina state commission for the blind shall be charged with the supervision of the administration of assistance to the needy blind under this chapter, and said commission shall establish objective standards for personnel to be qualified for employment in the administration of this chapter, and said commission shall make all rules and regulations as may be necessary for carrying out the provisions of this chapter, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this chapter. (1937, c. 124, s. 2.)

§ 5126(14). **Application for benefits under chapter; investigation and award by county commissioners.**—Any person claiming benefit under this chapter, shall file with the commissioners of the county in which he or she has a legal settlement an application in writing, in duplicate, upon forms prescribed by the North Carolina state commission for the blind, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the state of North Carolina and who is actively engaged in the treatment of diseases of the human eye, to the effect that the applicant has twenty-two hundredths (20/200) vision or less in the better eye, with correcting glasses. Such application may be made on the behalf of any such blind person by the North Carolina state commission for the blind, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an ophthalmologist designated by the North Carolina state commission for the blind. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the North Carolina state commission for the blind, not inconsistent with this chapter and in accordance with the further provisions hereof. (1937, c. 124, s. 3.)

§ 5126(15). **Eligibility for relief.**—Blind persons having the following qualifications shall be eligible for relief under the provisions of this chapter:

(1) Who have twenty-two hundredths (20/200) vision or less in the better eye with correcting glasses, or whose vision is insufficient for use in ordinary occupations for which sight is essential; and

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this state able to provide for them who are legally responsible for their maintenance; and

(3) Who have resided in the state of North Car-

olina for five years during the nine years immediately preceding the date of such application, and who have been residents of the state of North Carolina one year immediately preceding the application; and

(4) Who are not inmates of any charitable or correctional institution of this state or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who is not publicly soliciting alms in any part of the state, and who is not, because of physical or mental condition, in need of continuing institutional care. (1937, c. 124, s. 4.)

§ 5126(16). **Application transmitted to commission; notice of award; review by commission.**—Promptly after an application for aid is made to the board of county commissioners under this chapter the North Carolina state commission for the blind shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the North Carolina state commission for the blind and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the North Carolina state commission for the blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the North Carolina state commission for the blind. Notice of such appeal must be given in writing to the board of county commissioners, and within thirty days after the receipt of such notice the board of county commissioners shall transmit to the North Carolina state commission for the blind copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the North Carolina state commission for the blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the North Carolina state commission for the blind shall hear the said appeal under such rules and regulations not inconsistent with this chapter as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said commission, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive secretary of the North Carolina state commission for the blind, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases, whether or not any appeal shall be

taken by the applicant, the North Carolina state commission for the blind shall carefully examine such award or decision, as the case may be, and shall, in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action, and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina state commission for the blind shall make any order increasing or decreasing the award allowing or disallowing the same, the applicant or the board of county commissioners shall have the right, within ten days from notice thereof, to have such order reviewed by the members of the North Carolina state commission for the blind. The procedure in such cases shall be as provided in this section on appeals to the commission by the applicant. (1937, c. 124, s. 5.)

§ 5126(17). Amount and payment of assistance; source of funds.—When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this chapter, as provided in section 5126(14), they shall order necessary relief to be granted under the rules and regulations prescribed by the North Carolina state commission for the blind, but in no case in an amount to exceed thirty dollars per month to be paid from county, state and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July first, one thousand nine hundred thirty-seven, and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the North Carolina state commission for the blind, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this chapter and the total amount of such county's one-fourth part thereof required to be paid by such county. All such counties shall make an appropriation in their budgets which shall be found to be ample to pay their part of such payments and, at the time of levying other taxes, shall levy sufficient taxes for the payment of the same. This provision shall be mandatory on all of the counties in the state. Such taxes so levied shall be and hereby are declared to be for this special purpose and levied with the consent of the general assembly. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the North Carolina state commission for the blind until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's one-fourth part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six per cent, and provision for payment

thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the state shall cause to be transmitted to the state treasurer one-fourth of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July first, one thousand nine hundred thirty-seven. The state treasurer shall deposit said funds and credit same to the account of the North Carolina state commission for the blind to be employed in carrying out the provisions of this chapter. (1937, c. 124, s. 6.)

§ 5126(18). Payment of awards.—After an award to a blind person has been made by the board of county commissioners, and approved by the North Carolina state commission for the blind, the North Carolina state commission for the blind shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the North Carolina state commission for the blind shall determine. Such payment shall be made by warrant of the state auditor, drawn upon such funds in the hands of the state treasurer, at the instance and request and upon a proper voucher signed by the executive secretary of the North Carolina state commission for the blind, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure. (1937, c. 124, s. 7.)

§ 5126(19). When applications for relief made directly to state commission.—If any person, otherwise entitled to relief under this chapter, shall have the residence requirements in the state of North Carolina, but no legal settlement in any one of the counties therein, his or her application for relief under this chapter shall be made directly to the North Carolina state commission for the blind, in writing, in which shall be contained all the facts and information sufficient to enable the said commission to pass upon the merits of the application. Blank forms for such application shall be furnished by the North Carolina state commission for the blind. If the said commission finds the applicant entitled to assistance within the rules and regulations prescribed by it, and consonant with the provisions of this chapter, relief shall be given to such person coming under the rules of eligibility to such extent as the North Carolina state commission for the blind may consider just and proper, but not in excess of the amounts specified in section 5126(17). Payment of the benefits thus awarded, however, shall be made entirely out of the funds provided by the state, together with such funds which may be added thereto as federal grants in aid, and shall not be a charge upon the funds locally raised by taxation in the counties until such person shall have resided in some county for sufficient time to acquire a settlement therein; thereafter payments shall be made as in other cases. (1937, c. 124, s. 8.)

§ 5126(20). Awards subject to reopening upon change in condition.—All awards to needy blind persons made under the provisions of this chapter shall be made subject to reopening and reconsideration at any time when there has been any

change in the circumstances of any needy blind person or for any other reason. The North Carolina state commission for the blind and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations bi-annually, or more often, as may be found necessary. The North Carolina state commission for the blind may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this chapter and in accordance with the terms hereof.

Any changes made in such award shall be reported to the North Carolina state commission for the blind, and shall be subject to the right of appeal and review, as provided in section 5126(16). (1937, c. 124, s. 9.)

§ 5126(21). Disqualifications for relief. — No aid to needy blind persons shall be given under the provisions of this chapter to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged. (1937, c. 124, s. 10.)

§ 5126(22). Beneficiaries not deemed paupers. — No blind person shall be deemed a pauper by reason of receiving relief under this chapter. (1937, c. 124, s. 11.)

§ 5126(23). Misrepresentation or fraud in obtaining assistance. — Any person who shall obtain, or attempt to obtain, by means of a wilful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred (\$500.00) dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this chapter. (1937, c. 124, s. 12.)

§ 5126(24). Cooperation with federal social security board; grants from federal government. — The North Carolina state commission for the blind is hereby empowered and authorized and directed to co-operate with the federal social security board, created under Title X of the Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five, in any reasonable manner as may be necessary to qualify for federal

aid for assistance to the needy blind and in conformity with the provisions of this chapter, including the making of such reports in such form and containing such information as the federal social security board may from time to time require, and comply with such regulations as said board may from time to time find necessary to assure the correctness and verification of such reports.

The North Carolina state commission for the blind is hereby further empowered and authorized to receive grants in aid from the United States government for assistance to the blind and grants made for payment of cost of administering the state plan for aid to the blind, and all such grants so received hereunder shall be paid into the state treasury and credited to the account of the North Carolina state commission for the blind in carrying out the provisions of the chapter. (1937, c. 124, s. 13.)

§ 5126(25). Appropriations by state; cost of administration by federal government. — The sum of eighty-five thousand one hundred and eighty (\$85,180.00) dollars annually, or so much thereof as may be necessary, shall be and is hereby appropriated out of the moneys within the state treasury and not otherwise appropriated, which amount shall be used exclusively for payments to needy blind persons, and in carrying out the purposes of this chapter, to be paid by the state treasurer upon the warrant of the state auditor upon the order of the North Carolina state commission for the blind. These funds shall be in addition to the amount annually appropriated to the North Carolina state commission for the blind for carrying into effect the provisions of chapter fifty-three, Public Laws of North Carolina, one thousand nine hundred thirty-five [§ 5126(1) et seq.], by which said North Carolina state commission for the blind was created.

Said commission is hereby authorized to expend, under the provisions of the Executive Budget Act, such grants as shall be made for paying the cost of administering this chapter by the federal government under Title X of the Social Security Act. (1937, c. 124, s. 14.)

Editor's Note. — Public Laws 1935, c. 53, s. 12, made an annual appropriation of twenty-five thousand dollars.

§ 5126(26). Termination of federal aid. — If for any reason there should be a termination of federal aid as anticipated in this chapter, then and in that event this chapter shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become effective or be in force unless and until the governor of the state of North Carolina has issued a proclamation duly attested by the secretary of the state of North Carolina to the effect that there has been a termination of such federal aid. In the event that this chapter should be ipso facto repealed as herein provided, the state funds on hand shall be converted into the general fund of the state for such use as may be authorized by the director of the budget, and the county funds accumulated by the provisions of this chapter in the respective counties of the state shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 124, s. 15½.)

CHAPTER 92

CONFEDERATE HOMES AND PENSIONS

Art. 1. Soldiers' Home

§ 5133(1). Provision for accommodations more consistent with the health, comfort and happiness of inmates.—When in the discretion of the directors of the soldiers' home, appointed and selected under authority of Consolidated Statutes, five thousand one hundred twenty-eight, it may be desirable for the better care and attention of the said inmates now in the soldiers' home, or who in the future may be entitled under chapter ninety-two of the Consolidated Statutes to the privileges of the soldiers' home, and for the furnishing to them of accommodations more consistent with their health, comfort and happiness, the said board of directors may discontinue the use of the soldiers' home, established at Raleigh for such purpose, and shall furnish them such accommodations elsewhere and such grants in aid as shall secure to them the proper care and attention which in the opinion of the board will be more conducive to their health, welfare and happiness. (1937, c. 316.)

Art. 3. Pensions

Part 2. Persons Entitled to Pensions;
Classification and Amount

§ 5168(j). Classification of pensions for soldiers and widows.—

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, three hundred dollars (\$300.00).

(1937, c. 318.)

Editor's Note.—The 1937 amendment struck out all of paragraph entitled "Class A" under "Widows" in this section and inserted the above in lieu thereof. The rest of the section, not being affected by the amendment, is not set out here.

§ 5168(j1). Certain widows of Confederate soldiers placed on Class B pension roll.—All widows of Confederate soldiers who have lived with such soldiers for a period of ten years prior to the death of such soldier, and where the death of the soldier occurred since the year one thousand eight hundred ninety-nine, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers as hereinbefore referred to, except and until they shall have qualified for said benefits under and pursuant to the general state pension laws as modified hereby. (1937, cc. 181, 454.)

§ 5168(k1). Removal from pension lists of persons eligible for old age assistance.—All Class "B" widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for old age assistance under act of the general assembly passed at this session, from and after the first day of June, one thousand nine hundred thirty-seven, shall not be entitled to any pension provided, by the provisions of chapter ninety-two, Consolidated Statutes, entitled "Confederate Homes and Pensions," and any acts of the general assembly amendatory thereof (§ 5127 et seq.), or by virtue of any special or general law relat-

ing to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

On or before the first day of June, one thousand nine hundred thirty-seven, the county pension board in every county in this state shall carefully examine the pension roll in each county and shall remove from the pension lists in said county all Class "B" widows of Confederate veterans and colored servants of Confederate soldiers who are eligible for old age assistance under the aforesaid acts of the general assembly. Ten days notice shall be given to each pensioner of a hearing which shall be had on each case before the order is made removing such person from the pension roll. At the time of said hearing the county pension board shall carefully consider the situation of such pensioner, and if it clearly appears from such examination that such pensioner is eligible for old age assistance, and such fact is found by them, such person shall be removed from the pension roll. If it should thereafter be determined that such person was not found to be eligible for old age assistance by the authority administering said law, the name of such person shall be restored to the said pension list by the county board of pensions, and the full pension to which said person was entitled, if the name had not been withdrawn from said list, shall be paid.

The county pension board, after revising the list of pensions in each county, shall promptly certify to the state board of pensions the revised list of pensioners in each county, and the state board of pensions shall certify the revised list of pensioners to the state auditor, and the state auditor shall transmit to the clerks of the superior court in the several counties the correct revised list of pensioners, with their postoffices, as allowed by the state board of pensions. (1937, c. 227.)

CHAPTER 92A

CONTRACTORS

Art. 1. General Contractors

§ 5168(cc). Contractor defined.—For the purpose of this article a general contractor is defined to be one who, for a fixed price, commission, fee or wage, undertakes to bid upon or to construct or superintend the construction of any building, highway, sewer, grading or any improvement or structure where the cost of the undertaking is ten thousand dollars or more; and anyone who shall bid upon or engage in constructing or superintending the construction of any structures or any undertakings or improvements above mentioned in the state of North Carolina costing ten thousand dollars or more, shall be deemed and held to have engaged in the business of general contracting in the state of North Carolina. (1925, c. 318, s. 1; 1931, c. 62, s. 1; 1937, c. 429, s. 1.)

Editor's Note.—The 1937 amendment made this section applicable to bidding upon construction.

§ 5168(jj). Records; roster of licensed contractors.—The secretary-treasurer shall keep a record of the proceedings of the board and a register of all applicants for license showing for each the date of application, name, qualifications, place of business, place of residence, and whether license was granted or refused. The books and register of this board shall be prima facie evi-

dence of all matters recorded therein. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the secretary of the board during the month of January of each year; such roster shall be printed by the board out of funds of said board as provided in section 5168(ii). On or before the first day of March of each year the board shall submit to the governor a report of its transactions for the preceding year, and shall file with the secretary of state a copy of such report, together with a complete statement of the receipts and expenditures of the board, attested by the affidavits of the chairman and the secretary and a copy of the said roster of licensed general contractors. (1925, c. 318, s. 8; 1937, c. 429, s. 2.)

Editor's Note.—The 1937 amendment eliminated the requirement for mailing roster of contractors to clerks.

§ 5168(kk). Application for license; examination; certificate; renewal.—Any one hereafter desiring to be licensed as a general contractor in this state shall make and file with the board, thirty days prior to any regular or special meeting thereof, a written application on such form as may then be by the board prescribed for examination by the board, which application shall be accompanied by twenty dollars (\$20.00). The board may require the applicant to furnish evidence of his ability, character and financial responsibility, and if said application is satisfactory to the board, then the applicant shall be entitled to an examination to determine his qualifications. If the result of the examination of any applicant shall be satisfactory to the board, then the board shall issue to the applicant a certificate or limited certificate to engage as a general contractor in the state of North Carolina as provided in said certificate, or limited certificate. The board may classify and limit the certificate granted to any applicant with respect to the character or extent of the work to be performed under such certificate and license, and it shall be the responsibility of the board, or the members of said board, to ascertain from reliable sources whether or not the past performance record of an applicant is good, and whether or not he has the reputation of paying his labor and material bills, as well as carrying out other contracts that he may have entered into. Any one failing to pass such examination may be re-examined at any regular meeting of the board without additional fee. Certificate of license shall expire on the last day of December following its issuance or renewal, and shall become invalid on that date unless renewed, subject to the approval of the board. Renewal may be effective any time during the month of January by the payment of a fee of ten dollars (\$10.00) to the secretary of the board. (1925, c. 318, s. 9; 1931, c. 62, s. 2; 1937, c. 429, s. 3.)

Editor's Note.—The 1937 amendment struck out the former section and inserted the above in lieu thereof.

Prior to this amendment, Public Laws 1937, c. 328, amended the section by adding at the end the following: "Provided, the licensing board may for good cause hear and pass upon any application for license in a period of less than thirty days from the filing of said application."

§ 5168(ll). Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; notice of charges; reissuance of certificate.—The board shall have the power to revoke

the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency or misconduct in the practice of his profession, or wilful violation of any provisions of this article. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any general contractor licensed hereunder; such charges shall be in writing and sworn to by the complainant and submitted to the board. Such charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board within thirty days after the date in which they were preferred. A time and place for such hearing shall be fixed by the board and held in the county in which said charges originated or such other county as the board may designate. A copy of the charges, together with the notice of the time and place of hearing, shall be legally served on the accused at least fifteen days before the fixed date for the hearing, and in the event that such service cannot be effected fifteen days before such hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition. At said hearing the accused shall have the right to appear personally and by counsel and to cross-examine witnesses against him, her or them, and to produce evidence of witnesses in his, her or their defense. If after said hearing at least four members of the board vote in favor of finding the accused guilty of any fraud or deceit in obtaining license, or of gross negligence, incompetency or misconduct in practice the board shall revoke the license of the accused.

The board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, three or more members of the board vote in favor of such reissuance for reasons the board may deem sufficient.

The board shall immediately notify the secretary of state of its finding in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the board. (1925, c. 318, s. 10; 1937, c. 429, s. 4.)

Editor's Note.—The 1937 amendment so changed this section that a comparison here is not practical.

§ 5168(mm). Certificate evidence of license.—The issuance of a certificate of license or limited license by this board shall be evidence that the person, firm or corporation named therein is entitled to all the rights and privileges of a licensed or limited licensed general contractor while the said license remains unrevoked or unexpired. (1925, c. 318, s. 11; 1937, c. 429, s. 5.)

Editor's Note.—The 1937 amendment inserted the words "or limited license" in this section.

§ 5168(nn). Unauthorized practice of contracting; impersonating contractor; false certificate; giving false evidence to board; penalties.—Any person, firm or corporation not being duly authorized who shall contract for or bid upon the construction of any of the projects or works enumerated in section 5168(cc), without having first complied with the provisions hereof, or who shall attempt to practice general contracting in this state,

except as provided for in this article, and any person, firm, or corporation presenting or attempting to file as his own the licensed certificate of another or who shall give false or forged evidence of any kind to the board or to any member thereof in maintaining a certificate of license or who falsely shall impersonate another or who shall use an expired or revoked certificate of license, and any architect or engineer who receives or considers a bid from any one not properly licensed under this chapter, shall be deemed guilty of a misdemeanor and shall for each such offense of which he is convicted be punished by a fine of not less than five hundred dollars or imprisonment of three months, or both fine and imprisonment in the discretion of the court. And the board may, in its discretion, use its funds to defray the expense, legal or otherwise, in the prosecution of any violations of this law. (1925, c. 318, s. 12; 1931, c. 62, s. 3; 1937, c. 429, s. 6.)

Editor's Note.—The 1937 amendment made an insertion in the first part of this section, and added the last sentence.

§ 5168(oo). Regulations as to issue of building permits.—Any person, firm or corporation, upon making application to the building inspector or such other authority of any incorporated city, town or village in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading or any improvement or structure where the cost thereof is to be ten thousand dollars (\$10,000.00) or more, shall, before he be entitled to the issuance of such permit, furnish satisfactory proof to such inspector or authority that he is duly licensed under the terms of this article to carry out or superintend the same, and that he has paid the license tax required by the Revenue Act of the state of North Carolina then in force so as to be qualified to bid upon or contract for the work for which the permit has been applied; and it shall be unlawful for such building inspector or other authority to issue or allow the issuance of such building permit unless and until the applicant has furnished evidence that he is either exempt from the provisions of this article or is duly licensed under this article to carry out or superintend the work for which permit has been applied; and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit; and such building inspector, or other such authority, violating the terms of this section shall be guilty of a misdemeanor and subject to a fine of not more than fifty dollars (\$50.00). (1925, c. 318, s. 13; 1931, c. 62, s. 4; 1937, c. 429, s. 7.)

Editor's Note.—Prior to the 1937 amendment this section related to exemptions from article.

§ 5168(pp). Copy of article included in specifications; bid not considered unless contractor licensed; notification to secretary of board.—All architects and engineers preparing plans and specifications for work to be contracted in the state of North Carolina shall include in their invitations to bidders and in their specifications a copy of this article or such portions thereof as are deemed necessary to convey to the invited bidder, whether he be a resident or non-resident of this state and whether a license has been is-

sued to him or not, the information that it will be necessary for him to show evidence of a license before his bid is considered. Any person, firm or corporation desiring to bid upon or contract for any work or improvement enumerated in section 5168(cc) which shall cost seven thousand five hundred dollars (\$7,500.00) or more shall, at least twenty-four hours before making such bid or entering into such contract, notify the secretary of said board in writing of intention to make such bid or contract. (1925, c. 318, s. 14; 1937, c. 429, s. 8.)

Editor's Note.—The 1937 amendment added the second sentence of this section.

Art. 3. Tile Contractors

§ 5168(eee). License required of tile contractors.—Any person, firm, or corporation desiring to engage in tile contracting within the state of North Carolina as defined in this article shall make application in writing for license to the North Carolina licensing board for tile contractors: Provided, that the provisions of this article shall not apply to state colleges, hospitals and other state institutions. (1937, c. 86, s. 1.)

§ 5168(fff). Tile contracting defined.—Engaging in tile contracting for the purpose of this article is defined to mean any person, firm, or corporation who for profit undertakes to lay, set, or install ceramic floor and wall tiling in buildings for private or public use. (1937, c. 86, s. 2.)

§ 5168(ggg). Licensing board created; membership; appointment and removal.—The North Carolina licensing board for tile contractors shall consist of five members, each of whom shall be a reputable tile contractor residing in the state of North Carolina who has been engaged in the business of tile contracting for at least five years. The members of the first board shall be appointed within sixty days after the ratification of this article for terms of one, two, three, four, and five years by the governor, and the governor in each year thereafter shall appoint one licensed tile contractor to fill the vacancy caused by the expiration of the term of office, the term of such new member to be for five years. If vacancy shall occur in the board for any cause the same shall be filled by appointment of the governor. The governor shall have the power to remove from office any member of said board for incapacity, misconduct, or neglect of duty. (1937, c. 86, s. 3.)

§ 5168(hhh). Oath of office; organization; meetings; authority; compensation.—The members of said board shall qualify by taking an oath of office in writing to be filed with the secretary of state to uphold the constitution of the United States and the constitution of North Carolina and to properly perform the duties of his office. The board shall elect a president, vice-president, and secretary-treasurer. A majority of the members of the board shall constitute a quorum. Regular meetings shall be held at least twice a year, at such time and place as shall be deemed most convenient. Due notice of such meetings shall be given to all applicants for license in such manner as the by-laws may provide. The board may prescribe regulations, rules, and by-laws for its own proceedings and government and for the examina-

tion of applicants not in conflict with the laws of North Carolina. Special meetings may be held upon a call of three members of the board. Each member of the board shall receive for his services the sum of ten (\$10.00) dollars per day for each and every day spent in the performance of his duties, and shall be reimbursed for all necessary expenses incurred in the discharge of his duties. (1937, c. 86, s. 4.)

§ 5168(iii). Secretary-treasurer, duties and bond; seal; annual report to governor.—It shall be the duty of the secretary-treasurer to keep a record of all proceedings of the board and all licenses issued, and to pay all necessary expenses of the board out of the funds collected, and he shall give such bond as the board shall direct. All funds in excess of the sum of one hundred (\$100.00) dollars remaining in the hands of the secretary-treasurer, after all of the expenses of the board for the current year have been paid, shall be paid over to the Greater University of North Carolina for the use of the ceramic engineering department of North Carolina State College to be devoted by it to the development of the safe, proper, and sanitary uses of tile. The board shall adopt a seal to be affixed to all of its official documents, and shall make an annual report of its proceedings to the governor on or before the first day of March of each year, which report shall contain an account of all moneys received and disbursed. (1937, c. 86, s. 5.)

§ 5168(jjj). Applications for examinations; fee; certificate of registration.—Any person desiring to be examined by said board must fill out and swear to an application furnished by the board at least two weeks prior to the holding of an examination. Each applicant upon making application shall pay to the secretary-treasurer of the board a fee of twenty-five (\$25.00) dollars. All persons successfully passing such examination shall be numbered and registered as licensed to engage in the business of tile contracting and shall receive a certificate of such registration, which certificate shall expire on the thirty-first day of December following its issuance or renewal. (1937, c. 86, s. 6.)

§ 5168(kkk). Fee for annual renewal of registration; license revoked for default; penalty for reinstatement.—Every licensed tile contractor who desires to continue in business in this state shall annually, on or before the first day of January of each year, pay to the secretary-treasurer of the board the sum of fifty (\$50.00) dollars for which he shall receive a renewal of such registration, and in case of the default of such registration by any person the license shall be revoked. Any licensed tile contractor whose license has been revoked for failure to pay the renewal fee, as herein provided, may apply to have the same regranted upon payment of all renewal fees that should have been paid, together with a penalty of ten (\$10.00) dollars. (1937, c. 86, s. 7.)

§ 5168(III). Power of board to revoke or suspend licenses; charges; notice and opportunity for hearing; appeal.—The board shall have the power after hearing to revoke or suspend the license of any tile contractor upon satisfactory proof that such license was secured by fraud or deceit practiced upon the board, or upon satisfactory proof

that such tile contractor is guilty of gross negligence, incompetency, or inefficiency in carrying on the business of tile contracting. Each charge against any contractor submitted to the board shall be in writing and sworn to by the complainant: Provided, however, that before any license shall be revoked or suspended the holder thereof shall have notice of the specific charge or charges preferred, and at a date specified in said notice, at least thirty days after legal service thereof, be given public hearing, and have an opportunity to appear, cross-examine witnesses, and to produce evidence. Any person being aggrieved by the action of the board shall have the right of appeal to the superior court. (1937, c. 86, s. 8.)

Editor's Note.—While the provision as to examination of applicants refers only to those who were not so engaged at the time the statute went into effect, the provisions as to revocation refer to all. 15 N. C. Law Rev., No. 4, p. 326.

§ 5168(mmm). No examination required of present contractors.—All persons, firms, or corporations now actively engaged in tile contracting in the state of North Carolina shall, upon filing affidavit with the board, receive license without examination upon payment of the annual license fee. (1937, c. 86, s. 9.)

§ 5168(nnn). License to one member of firm, etc., sufficient; no license required of employees.—Any firm, partnership, or corporation may engage in tile contracting in this state: Provided, one member of said firm, partnership, or corporation is a licensed contractor. No license shall be required of any mechanic or employee of a licensed tile contractor performing duties for the employer. (1937, c. 86, s. 10.)

§ 5168(ooo). Penalty for misrepresentation or fraud in procuring or maintaining license certificate.—Any person, firm, or corporation not being duly licensed to engage in tile contracting in this state as provided for in this article, and any person, firm, or corporation presenting as his own the license certificate of another or who shall give false or forged evidence of any kind to the board or any member thereof in maintaining a certificate of license, or who shall falsely impersonate another, or who shall use an expired or revoked certificate of license, or an architect, engineer or contractor who receives or considers a bid from any one not properly licensed under this article, shall be guilty of misdemeanor, and for each offense of which he is convicted be punished by a fine of not less than two hundred (\$200.00) dollars, or by imprisonment of not less than two months or both fined and imprisoned in the discretion of the court. (1937, c. 86, s. 11.)

Art. 4. Electrical Contractors

§ 5168(ppp). Board of examiners created; members appointed and officers; terms; principal office; meetings; quorum; compensation and expenses.—A state board of examiners of electrical contractors is hereby created, which shall consist of the state electrical engineer, who shall act as chairman of the board, the secretary of the association of electrical contractors of North Carolina, and three other members to be appointed by the governor as follows: One from the faculty of the engineering school of the Greater University of North Caro-

lina, one person who is serving as chief electrical inspector of a municipality in the state of North Carolina, and one representative of a firm, partnership or corporation located in the state of North Carolina and engaged in the business of electrical contracting. Of the three appointed members one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, and until their respective successors are elected and qualified; and thereafter each appointment shall be for a term of three years. The principal office of the board shall be at such place as shall be designated by a majority of the members thereof. The board of examiners shall hold regular meetings quarterly and may hold special meetings on call of the chairman. They shall annually appoint and at their pleasure remove a secretary-treasurer, who need not be a member of the board, and whose duties shall be prescribed and whose compensation shall be fixed by the board. Three members of the board shall constitute a quorum. The appointive members of the board shall be entitled to receive the sum of seven dollars (\$7.00) and actual and necessary expenses for each day actually devoted to the performance of their duties under this article: Provided, however, that none of the expenses of said board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the state of North Carolina; and said board and no officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the state of North Carolina. (1937, c. 87, s. 1.)

§ 5168(qqq). Board to appoint secretary-treasurer within thirty days; bond required; oath of membership.—The board of examiners of electrical contractors shall within thirty days after its appointment meet at the time and place designated by the chairman and appoint a secretary-treasurer. The secretary-treasurer shall give a bond approved by the board for the faithful performance of his duties in such form as the board may from time to time prescribe. The board shall have a common seal and shall formulate rules to govern its actions and may take testimony and proof concerning all matters within its jurisdiction. Before entering upon the performance of their duties hereunder each member of the board shall take and file with the secretary of state an oath in writing to properly perform the duties of his office as a member of said board, and to uphold the constitution of North Carolina and the constitution of the United States. (1937, c. 87, s. 2.)

§ 5168(rrr). Seal for board; duties of secretary-treasurer; surplus funds; contingent or emergency fund.—The board shall adopt a seal for its own use. The seal shall have inscribed thereon the words "board of examiners of electrical contractors, state of North Carolina," and the secretary shall have charge and custody thereof. The secretary-treasurer shall keep a record of the proceedings of said board and shall receive and account for all moneys derived under the operations of this article. Any funds remaining in the hands of the secretary-treasurer to the credit of the board after the expenses of the board for the current

year have been paid shall be paid over to the electrical engineering department of the Greater University of North Carolina to be used for electrical experimentations: Provided, however, the board shall have the right to retain as a contingent or emergency fund ten per cent of such gross receipts in each year of its operation. (1937, c. 87, s. 3.)

§ 5168(sss). Board to give examinations and issue licenses.—It shall be the duty of the board of examiners of electrical contractors to receive all applications for licenses filed by persons, or representatives of firms or corporations seeking to enter upon or continue in the electrical contracting business within the state of North Carolina, as such business is herein defined, and upon proper qualification of such applicant to issue the license applied for; to prescribe the conditions of examination of, and, subject to the provisions of this article, to give examinations to all persons who are under the provisions of this article required to take such examination. (1937, c. 87, s. 4.)

§ 5168(ttt). Persons required to obtain licenses; examination required; licenses for firms or corporations.—No person, firm or corporation shall engage in the business of installing, maintaining, altering or repairing within the state of North Carolina any electric wiring, devices, appliances or equipment for which a permit is now or may hereafter be required by the statutes of the state of North Carolina, or by municipal or county ordinances in the county in which such work is undertaken, dealing with the erection and inspection of buildings and fire protection and electrical installation unless such person, firm or corporation shall have received from the board of examiners of electrical contractors an electrical contractor's license: Provided, however, that the provisions of this article shall not apply (a) to the installation, construction, or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter; (b) to the installation, construction, maintenance, or repair of telephone, telegraph, or signal systems by public utilities; (c) to any mechanic employed by a licensee of this board; (d) to the installation, construction or maintenance of electrical equipment and wiring for temporary use by contractors in connection with the work of construction; (e) to the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by persons, firms or corporations, upon their own property, who maintain in regular and full-time employment electricians, when such electricians are employed and engaged exclusively by such persons, firms or corporations; (f) to the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by state institutions and private educational institutions which maintain a private electrical department. No license shall be issued by said board without an examination of the applicant for the purpose of ascertaining his qualifications for such work, but no such examination shall be required for the annual renewal of such license: Provided, however, that persons, firms or corporations residing in the state of North Carolina at the time of the ratification of this article, who have paid the license fees required of electrical contrac-

tors by the State Revenue Act of one thousand nine hundred and thirty-five, upon proper certification or establishment of such fact, shall be granted a license by the board of examiners under this article without examination. Firms or corporations shall be eligible to secure licenses from the board of examiners provided they have in their respective organizations at least one person duly qualified as an electrical contractor under the provisions of this article. No license or renewal of any license shall be issued to any applicant until the fees herein prescribed shall have been paid. (1937, c. 87, s. 5.)

§ 5168(uuu). Fees for licenses.—Before a license is granted to any applicant, and before any expiring license is renewed, the applicant shall pay to the board of examiners of electrical contractors a fee in such an amount as is herein specified for the license to be granted or renewed as follows:

For a Class 1, Electrical Contractor's License, state-wide	\$25.00
For a Class 2, Electrical Contractor's License, for one county only	5.00

(1937, c. 87, s. 6.)

§ 5168(vvv). Licenses expire on June 30th, following issuance; renewal; fees used for administrative expense.—Each license issued hereunder shall expire on June thirtieth following the date of its issuance, and shall be renewed by the board of examiners of electrical contractors upon application of the holder of the license and payment of the required fee at any time within thirty days before the date of such expiration. Licenses renewed subsequent to the date of expiration thereof may in the discretion of the board be subject to a penalty not exceeding ten per cent. The fees collected for licenses under this article shall be used for the expenses of the board of examiners in carrying out the provisions of this article, subject to the provisions herein made with reference to payment of surplus to the electrical engineering department of the Greater University of North Carolina for electrical experimental purposes. (1937, c. 87, s. 7.)

§ 5168(www). Examination before local examiner. — In order that applicants for licenses hereunder who are by the provisions of this article required to take an examination before the issuance thereof shall not be subject to any unreasonable inconvenience in connection therewith, the board of examiners of electrical contractors may, and upon the request of the board of commissioners of any county shall delegate to the electrical inspector of the county in which such applicant resides, or if there be no county electrical inspector, then to the electrical inspector of any municipality therein, the authority to conduct examinations of such applicant or applicants residing in such county, such examination, however, to be as prescribed by the board of examiners. In such an event the local examiner herein provided for shall transmit to the board of examiners of electrical contractors the results of such examination, and, if approved by the board, licenses on the basis of such examination shall be issued to the applicants upon the payment of the fees herein prescribed. (1937, c. 87, s. 8.)

§ 5168(xxx). License signed by chairman and

secretary-treasurer under seal of board; display in place of business required; register of licenses; records. — Licenses issued hereunder shall be signed by the chairman and the secretary-treasurer of the board of examiners, under the seal of the board. Every holder of license shall keep his certificate of license displayed in a conspicuous place in his principal place of business. The secretary of the board shall keep a register of all licenses to electrical contractors, which said register shall be open during the ordinary business hours of public inspection. The board of examiners shall keep minutes of all of its proceedings and an accurate record of its receipts and disbursements, which record shall be audited at the close of each fiscal year by a certified public accountant, and within thirty days after the close of each fiscal year a summary of its proceedings and a copy of the audit of its books shall be filed with the governor and the treasurer of the state. (1937, c. 87, s. 9.)

§ 5168(yyy). Licenses not assignable or transferable; suspension or revocation.—No license issued in accordance with the provisions of this article shall be assignable or transferable. Any such license may, after hearing, be suspended for a definite length of time or revoked by the board of examiners if the person, firm or corporation holding such license shall wilfully or by reason of incompetence violate any of the statutes of the state of North Carolina, or any ordinances of any municipality or county relating to the installation, maintenance, alteration or repair of electric wiring, devices, appliances or equipment. (1937, c. 87, s. 10.)

Editor's Note.—While the provision as to examination of applicants refers only to those who were not so engaged at the time the statute went into effect, the provision as to revocation refers to all. There is no provision for an appeal to the superior court, but an electrical contractor whose license is suspended or revoked undoubtedly has such a right. 15 N. C. Law Rev., No. 4, pp. 326, 327.

§ 5168(zzz). License does not relieve compliance with codes or laws.—Nothing in this article shall relieve the holder or holders of licenses issued under the provisions hereof from complying with the building or electrical codes or statutes or ordinances of the state of North Carolina, or of any county or municipality thereof, now in force or hereafter enacted. (1937, c. 87, s. 11.)

§ 5168(aaaa). Responsibility for negligence; non-liability of board. — Nothing in this article shall be construed as relieving the holder of any license issued hereunder from responsibility or liability for negligent acts on the part of such holder in connection with electrical contracting work; nor shall the board of examiners of electrical contractors be accountable in damages, or otherwise, for the negligent act or acts of any holder of such license. (1937, c. 87, s. 12.)

§ 5168(bbbb). Penalty for violation of article.—Any person, firm or corporation who shall violate any of the provisions of this article, or who shall engage or undertake to engage in the business of electrical contracting as herein defined, without first having obtained a license under the provisions of this article, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars (\$25.00) or more than fifty dollars (\$50.00) for each offense. Conviction of a violation of this article on the part of a holder of a license issued

hereunder shall automatically have the effect of suspending such license until such time as it shall have been reinstated by the board of examiners of electrical contractors. (1937, c. 87, s. 13.)

CHAPTER 93

CO-OPERATIVE ORGANIZATIONS

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATION

Art. 1. Organization

§ 5175(d). Conversion of federal association into state association.—Any federal savings and loan association organized and existing under the Home Owners Loan Act of one thousand nine hundred and thirty-three, as amended, may convert into a building and loan association, pursuant to the provisions of this chapter, with the same force and effect as though originally incorporated under the provisions of this sub-chapter, by complying with the acts of congress and the requirements of federal regulatory authority, and also by following the procedure as set out below:

1. The directors of such federal savings and loan association shall submit a plan of conversion to the federal home loan bank board (hereinafter referred to as "board") or other federal regulatory authority, and also to the insurance commissioner of the state of North Carolina. When such plan has been approved, either with or without amendment by both of said authorities, then said plan shall be submitted to the members of such association as provided in the next sub-section.

2. A meeting of the members shall be held upon not less than ten days' written notice to each member, served personally or sent by mail to the last known address of such member, postage prepaid, such notice to contain a statement of the time, place and purpose for which such meeting is called. It shall be regarded as sufficient notice of the purpose of said meeting if the call contain the following statement: "The purpose of said meeting being to consider the matter of the conversion of this association into a building and loan association, pursuant to the provisions of the laws of the state of North Carolina." The secretary or other officer of the association shall make proof by affidavit at such meeting of the due service of the notice or call for said meeting.

3. At the meeting of the members of such association, called and held as above provided, such members may, by affirmative vote of fifty-one per cent or more of members present, in person or by proxy, declare by resolution the determination to convert said association into a building and loan association operating under the laws of this state. A copy of the minutes of the proceedings of such meeting of the members, certified by the president or vice-president and secretary or assistant secretary of the association, shall be filed with the federal home loan bank board within five days after such meeting. Such certified copy, when so filed, shall be presumptive evidence of the holding and the action of such meeting.

4. Within thirty days after the approval of said proceedings by the board the officers of said association shall file with the clerk of the superior court of the county where such association is de-

signed to act a copy of the certificate of incorporation of such association, signed by at least seven members, to be recorded in the office of such clerk. Such certificate of incorporation shall conform to the provisions of the laws of this state. The clerk shall certify a copy of the certificate to the insurance commissioner, and shall not issue or record the same until duly authorized to do so by the insurance commissioner. Upon receipt of a copy of the certificate of incorporation the insurance commissioner shall at once examine into the facts connected with the conversion of such association, and, if it appears that such association if converted will be lawfully entitled to commence business as a building and loan association pursuant to the laws of this state, the insurance commissioner shall so certify to the clerk of the court in the county in which the association will be located, who shall thereupon issue and record such certificate of incorporation. Upon the issuance and recordation of such certificate of incorporation the association shall file with the board a certified copy of same. Thereupon the association shall cease to be a federal savings and loan association and shall be deemed to be converted into a building and loan association under the laws of this state, whose corporate existence shall be deemed then to begin.

5. At the time when the corporate existence of said state association begins all the property of the said federal association, including all its rights, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such state association, which shall have, hold and enjoy the same in its own right as fully and to the same extent as if the same was possessed, held or enjoyed by said federal association; and such state association shall be deemed to be a continuation of the entity and of the identity of said federal association, operating under and pursuant to the laws of this state, and all the rights, obligations and relations of said federal association to or in respect to any person, estate, or creditor, depositor, trustee or beneficiary of any trust, and in or in respect to any executorship or trusteeship or other trust or fiduciary function, shall remain unimpaired, and such state association, as of said beginning of its corporate existence, shall by operation of this section succeed to all such rights, obligations, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust and relation in the same manner as if such state association had itself assumed the trust or relation, including the obligations and liabilities connected therewith. (1937, c. 12.)

Art. 3. Loans

§ 5182. Manner of making loans; security required.—At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings at which the funds in the treasury applicable for loans may be loaned: Provided, that between meetings of

the board of directors not less than three members of an executive committee authorized and appointed by the board may by the unanimous vote of the members present make such loans. Any loans so made or approved by the executive committee shall be reported to the board of directors at its next meeting. No loans shall be made by such association to any one not a member thereof. Borrowers shall be required to give real estate security, either by way of mortgage or deed of trust, subject only to mortgages or deeds of trust to secure loans made by the association and undue taxes and special assessment: Provided, that the shares of any such association may be received as security for a loan on such shares of an amount not to exceed ninety per centum of the amount paid in as dues on such shares: Provided further, that bonds issued as general obligations of the United States government, and bonds issued as general obligations of the State of North Carolina may be received as security to an amount not exceeding ninety per centum of the face value of such bonds. (Rev., s. 3890; 1905, c. 435, s. 8; 1907, c. 959, s. 4; 1919, c. 249; 1937, c. 11.)

Editor's Note.—The 1937 amendment so changed this section that a comparison here is not practical.

§ 5182(a). Direct reduction of principal.—The board of directors of any building and loan association, heretofore or hereafter organized under the laws of this state, may, unless specifically prohibited by the certificate of incorporation, constitution or by-laws of the association, by resolution or by-law, permit borrowing members to repay their indebtedness by a direct monthly or periodical reduction of principal method. In every such case the borrower shall in writing make such agreement with the association relative to the repayment of his indebtedness as the directors may require. The agreement shall stipulate that the borrower or debtor shall make periodical payments, not less frequently than once a month, until such mortgage indebtedness, advances, if any, made by the association for payment of taxes, assessments, insurance premiums and other purposes, as may be owing from the borrower to the association, with interest thereon, shall have been fully paid. The balance of any loan account under such direct reduction of principal method shall be determined monthly, quarterly or semiannually, in order to ascertain the amount then necessary to satisfy in full the mortgage obligation, and when so ascertained such amount shall be the amount due upon said loan at said time to said association or any representative or successor thereof. Any association permitting such method of repayment may adopt a plan by which the interest shall be computed periodically on the preceding balance, and such interest shall be added to that preceding balance, together with any and all advances and other charges above enumerated made for the benefit of the borrower during the said interest period, and then deducting from the total any and all payments made by the borrower to the association during said period, or since the preceding balance was set up.

All payments made on a loan under such plan of direct periodical reduction shall be applied first to interest, and then to the principal of advances made for the account of the borrower and charged

thereto, and to the principal of the loan. The board of directors may adopt any other direct periodic reduction of principal plan that will require complete repayment of such loans: Provided, no plan of payment shall be adopted that will not mature and pay off the loan within twenty years from the date of the making thereof: Provided further, the board of directors may authorize the renewal or extension of the time of repayment of any loan theretofore made. No association shall make any loan upon this plan to any person unless he be a member of such association. (1937, c. 18.)

CHAPTER 94

DRAINAGE

SUBCHAPTER III. DRAINAGE DISTRICTS

Art. 5. Establishment of Districts

§ 5336(a). Local: Advancements by Pitt county.

Editor's Note.—For act making this section applicable to Edgecombe county, see Public Laws 1937, c. 278.

Art. 8. Assessments and Bond Issue

§ 5352. Assessment and payment; notice of bond issue.

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514.

§ 5353. Failure to pay deemed consent to bond issue.

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514.

§ 5359. Drainage bonds received as deposits.

Editor's Note.—Public Laws 1937, c. 334, amended this section by striking out the proviso and inserting in lieu thereof the following: "And any county is authorized to invest its sinking funds in such bonds issued by any drainage district: Provided, that the attorney general shall have approved the form of said bonds, to apply to Edgecombe and Pitt counties only."

CHAPTER 94A

DRY CLEANERS

§ 5382(1). Definitions.—When used in this chapter, unless the context otherwise requires, the following definitions shall apply:

a. "State dry cleaners commission" means the state agency created by this chapter for the dry cleaning, pressing, and/or dyeing business.

b. "Cleaning and dyeing business" includes any place or vehicle where the services of dry cleaning, wet cleaning as a process incidental to dry cleaning, dyeing, spotting, and/or finishing any fabric is rendered for hire, or is sold, resold or offered for sale or resale; and also includes the acceptance of any clothing or other fabric to be dry cleaned, dyed and/or pressed, and where said work is actually done and performed by other parties than those accepting it.

c. "Pressing" means the pressing of clothes or other fabric by whatever manner used; and shall include those persons, associations of persons, firms or corporations who accept clothes or other fabric for pressing, when the actual pressing is done and performed by other parties.

d. "Person" means any person, firm, corporation or association.

e. "Retail outlet" includes any establishment or

vehicle where dry cleaning, dyeing and/or pressing service is sold, or offered for sale, directly to the consumer, but where none of the processes of dry cleaning, dyeing and/or pressing is actually performed by such retail outlets and where the retail outlets are not owned or controlled by a retail or wholesale processing establishment.

f. "Press shop" includes any dry cleaning, dyeing and/or pressing establishment owning or having pressing equipment for the purpose of pressing clothes or other fabrics by whatever manner used, but where the actual process of dry cleaning and/or dyeing is not performed on the premises but is contracted out to a wholesale plant.

g. "Retail plant" includes any person, firm, corporation or association operating a cleaning and/or dyeing establishment performing dry cleaning, dyeing and pressing for sale directly to the consumer.

h. "Wholesale plant" includes any persons, associations of persons, firms or corporations operating a dry cleaning and/or dyeing establishment performing dry cleaning, dyeing and/or pressing for sale directly to the consumer and to retail outlets and to pressing shops as herein defined.

i. "Non-resident outlets" includes any place or vehicle where the services of dry cleaning, wet cleaning as a process incidental to dry cleaning, dyeing, spotting and/or finishing any fabric is rendered for hire or is sold, resold, or offered for sale; and also includes the acceptance of any fabric to be dry cleaned, dyed and/or pressed where the said work is actually done and performed outside the confines of the state of North Carolina. (1937, c. 30, s. 1.)

§ 5382(2). State dry cleaners commission created; members; terms and compensation; organization; personnel.—There is hereby created for the dry cleaning, dyeing and/or pressing business a commission to be known as state dry cleaners commission. Said commission shall consist of five members, to be appointed by the governor of the state of North Carolina, three of whom shall have been engaged in the dry cleaning, dyeing and/or pressing business in the state of North Carolina for at least five years next preceding his appointment, and two of whom shall not be connected with said business but shall be from the public at large; one of the members shall be appointed for a term of one year, two for a term of two years and two for a term of three years, and subsequent appointments shall be for a term of four years, except appointments to fill vacancies shall be for the unexpired terms, all of whom shall hold office at the pleasure of the governor for the terms indicated herein. The members of said commission shall receive as compensation for their services five dollars for each day while attending commission meetings and their necessary traveling expenses incurred in connection therewith. The commission shall elect one of its members as chairman and one of its members as vice-chairman, and shall adopt a set of rules and by-laws to govern its organization and proceedings, and shall adopt and use a seal. The commission is authorized and empowered to incur any and all expenses deemed necessary by it for the administration and enforcement of this chapter, and to appoint a secretary, who need not be a

member of the commission, and such other clerks, inspectors, and other assistants as it may deem necessary for the administration and enforcement of this chapter, and fix their duties, compensation, and terms of service, as well as the employment of such lawyers as may be approved by the attorneys general, all of which shall be paid out of the funds collected by the commission as provided in this chapter. (1937, c. 30, s. 2.)

§ 5382(3). Functions, duties and powers of commission.—The functions, duties, and powers of the "State Cleaners Commission" shall be as follows:

(1) To adopt and promulgate rules and regulations as may be necessary to control and regulate the dry cleaning, dyeing and/or pressing business in the following particulars:

a. Identification to the public of all persons, firms, corporations or associations licensed by the commission to engage in said businesses, as well as their agents or representatives.

b. Enforcement of existing fire, sanitation and labor laws where applicable to the industry, and all other laws applicable to the industry now on the statute books of North Carolina.

c. Prohibit false or misleading statements, advertisements or guarantees either in form or content.

d. Form of application required by commission for license and form of license to be issued by commission.

e. Require examination of persons not entitled to have issued to them a license as provided in this chapter, such examination to cover subjects deemed necessary to promote the public health, safety and welfare of the people of the state of North Carolina.

(2) To grant licenses to conduct the business of dry cleaning, dyeing and/or pressing to persons, firms, corporations, or associations in accordance with the provisions of this chapter and the rules and regulations of the commission. This commission may decline to grant a license, or may suspend or revoke a license already granted, after due notice and after hearing, on the grounds of any violation of the provisions of this chapter or the rules and regulations promulgated by said Commission, not in conflict with the provisions of this chapter: Provided, however, that any party accused shall have the right to appeal from the decision of the commission, in the event of a refusal to grant or the suspension or revocation of any license, to the superior court of the county in which the place of business of the accused party is located. Such appeal shall operate as a supersedeas with respect to the decision or ruling of said commission in the refusal to grant or the revocation or suspension of such license: Provided that, pending appeal, the accused party shall execute a bond in the sum of five hundred dollars (\$500.00) before the clerk of the court in which the appeal is pending, the surety to be approved by the clerk of said court and conditioned not to violate any of the provisions of this chapter.

(3) To act, for the purpose of this chapter, as a competent authority in connection with the matters pertinent thereto. (1937, c. 30, s. 3.)

Editor's Note.—While the provision as to examination of applicants refers only to those who were not so engaged at

the time the statute went into effect, the provision as to revocation refers to all, 15 N. C. Law Rev., No. 4, p. 326.

§ 5382(4). Persons, firms, etc., entitled to license.—All persons, firms, corporations and associations in the state of North Carolina engaged in the dry cleaning, dyeing and/or pressing business, or either of said businesses, at the time this chapter becomes law, shall be entitled to have issued to them a license upon the payment of the license fee herein required. (1937, c. 30, s. 4.)

§ 5382(5). Licenses required; issued annually; fees.—No person, firm, corporation or association shall engage in the business of dry cleaning, dyeing and/or pressing, as herein defined, within the state of North Carolina without first obtaining a license therefor from the said commission, which said license shall be valid for a period of one year and no more, unless sooner revoked or suspended by said commission under the provisions of this chapter.

For the purpose of providing funds for the administration of this chapter the annual fees for such licenses shall be as follows:

a. "Retail outlet"	\$ 5.00
b. "Press shop"	10.00
c. "Retail plant"	25.00
d. "Wholesale plant"	50.00
e. "Non-resident outlet"	50.00

Such license fees shall be collected by said commission and shall be disbursed as hereinafter provided. (1937, c. 30, s. 5.)

§ 5382(6). Funds collected.—All funds collected by the commission as provided in this chapter shall be paid into the general fund of the state treasury, and the same shall be and are hereby appropriated to the commission for the purpose of the administration and enforcement of this chapter. (1937, c. 30, s. 6.)

§ 5382(7). Violation punishable as misdemeanor.—Except pending an appeal, as hereinbefore provided, any person who shall engage in the business of dry cleaning, dyeing and/or pressing, as herein defined, without first having secured a license or certificate from said commission so to do, or who shall continue to do the business of dry cleaning, dyeing and/or pressing after the suspension or revocation of a license issued by the commission, shall be guilty of a misdemeanor under the laws of the state of North Carolina, and upon conviction thereof shall be punished by a fine of not less than ten dollars, nor exceeding one hundred dollars, and each day during which this violation shall continue shall be deemed a separate offense. (1937, c. 30, s. 7.)

§ 5382(8). State license fee not affected.—Licenses in this chapter shall be imposed as an additional state license fee for the privilege of carrying on the business, exercising the privilege, or doing the acts named herein, and nothing in this chapter shall be construed to relieve any person, firm, corporation, or association of persons from the payment of the fee prescribed under section 5382(5). (1937, c. 30, s. 8.)

CHAPTER 95

EDUCATION

SUBCHAPTER III. DUTIES, POWERS AND RESPONSIBILITIES OF COUNTY BOARDS OF EDUCATION

Art. 4. The Board: Its Corporate Powers

§ 5410. How constituted.

Editor's Note.—By Public Laws 1937, c. 38, the Randolph county board of education was increased from three to five members. And by Public Laws 1937, c. 79, the board of Iredell county was increased to seven members.

§ 5419. The board a body corporate.

Cited in *Fuller v. Lockhart*, 209 N. C. 61, 182 S. E. 733.

Art. 5. The Direction and Supervision of the School System

§ 5440(a). Instruction on alcoholism and narcotism.

Cited in *Newman v. Watkins*, 208 N. C. 675, 182 S. E. 453, dissenting opinion.

Art. 7. Instruction of Illiterates—Adult Education

§§ 5449-5451: Repealed by Public Laws 1937, c. 198, s. 1.

§ 5451(a). Program of adult education provided for; annual appropriation.—The state board of education is authorized to provide rules and regulations for establishing and conducting schools to teach adults, and the said schools when provided for shall become a part of the public school system of the state, and shall be conducted under the supervision of the state superintendent of public instruction. There is hereby appropriated annually the sum of twenty-five thousand (\$25,000.00) dollars from the general fund of the state for the purpose of carrying out the provisions of this section, and to be disbursed on vouchers issued by the state superintendent of public instruction. (1937, c. 198, ss. 2, 3.)

Art. 9. Erection, Repair and Equipment of School Buildings

§ 5467. School buildings necessary.

See the note to § 5599 in this supplement.

§ 5468. Erection of schoolhouses.—The building of all new schoolhouses and the repairing of all old schoolhouses over which the county board of education has jurisdiction shall be under the control and direction of and by contract with the county board of education, provided, however, that in the building of all new schoolhouses and the repairing of all old schoolhouses which may be located in a special charter district (as such district is defined by sub-section three of section 5387), the building of such new schoolhouses and the repairing of such old schoolhouses shall be under the control and direction of and by contract with the board of education or the board of trustees having jurisdiction over said special charter district. But the board shall not be authorized to invest any money in any new house that is not built in accordance with plans approved by the state superintendent, nor for more money than is made available for its erection. All contracts for buildings shall be in writing, and all buildings shall be inspected, received, and approved by the

county superintendent of public instruction, or by the superintendent of schools where such school buildings are located in a special charter district, before full payment is made therefor: Provided, this section shall not prohibit county boards of education and boards of trustees from having the janitor or any other regular employee to repair the buildings. From any moneys loaned by the state to any one of the several counties for the erection, repair or equipment of school buildings, teacherages and dormitories, the state board of education, under such rules as it may deem advisable, not inconsistent with the provisions of this article, may retain an amount not to exceed fifteen per cent of said loan until such completed buildings, erected or repaired, in whole or in part, from such loan funds, shall have been approved by such agent as the state board of education may designate: Provided, that upon the proper approval of the completed building, the state treasurer, upon requisition of the state superintendent of public instruction, authorized and directed by the state board of education, shall pay to the treasurer of the county the remaining part of said loan, together with interest from the date of the loan at a rate not less than three per cent on monthly balances. (C. S., 5415; 1923, c. 136, s. 60; 1925, c. 221; 1937, c. 353.)

Editor's Note.—The 1937 amendment inserted the proviso to the first sentence of this section. It also amended the third sentence by inserting the clause relating to superintendent of schools.

§ 5470(a). Sale of school property.

Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into and a decree restraining the execution of the contract was proper. *Bowles v. Fayetteville Graded Schools*, 211 N. C. 36, 188 S. E. 615.

§ 5470(b). Rejection of bids at public sales; private sale.—After the sale of school property, as herein provided for, has been had and in the opinion of the county board of education the amount offered for the property, either at the first or any subsequent sale, is inadequate, then, upon a finding of such fact by the county board of education, the said board is authorized to reject such bid and to sell the property at private sale: Provided, the price offered is in excess of that offered at such public sale. (1937, c. 117.)

SUBCHAPTER VII. REVENUE FOR THE PUBLIC SCHOOLS

Art. 18. How to Estimate Amount Necessary for Six Months Term—Equalization Fund

§ 5596. Contents of the May budget.

Premiums for insurance of its public school buildings is a necessary public expense of a county, and the incurring of liability therefor need not be submitted to the voters. *Fuller v. Lockhart*, 209 N. C. 61, 182 S. E. 733.

§ 5599. How to determine the amount of the

current expense fund, the capital outlay fund, and the debt service fund.

Assumption of Payment as County-Wide Obligation.—Since under § 5467 it is the duty of the county commissioners of each county to provide for the construction and equipment of schools in each district necessary to the maintenance of the constitutional school term, where some of the school districts of the county provide the necessary buildings and equipment upon failure of the county to do so, by issuing school bonds or otherwise, the county may assume such indebtedness upon the request of its board of education. *Marshallburn v. Brown*, 210 N. C. 331, 186 S. E. 265.

Applied in *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873.

SUBCHAPTER IXB. SCHOOL DISTRICT REFUNDING AND FUNDING BONDS

Art. 30D. Issuance and Levy of Tax for Payment

§ 5694(s1). Issuance of bonds by cities and towns; debt statement; tax levy for repayment.—In case the boundaries of any such school district are coterminous with any city or town, the governing body of such city or town is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of the Municipal Finance Act, as amended, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Act and acts amendatory thereof and supplemental thereto, except in the following respects:

(a) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.

(b) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, sections two thousand nine hundred and thirty-eight and two thousand nine hundred and forty-three of the Municipal Finance Act, as amended, shall be read and understood as if they contained no requirements in respect to such matters.

(c) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1937, c. 126.)

SUBCHAPTER XI. TEXTBOOKS AND PUBLIC LIBRARIES

Art. 37B. State Textbook Commission

§ 5754(7). Textbook commission created; supercedes textbook purchase and rental commission.—There is hereby created a state textbook commission of five members, to be composed as follows:

The state superintendent of public instruction, ex officio chairman; the attorney general, the director of the division of purchase and contract, and two members to be appointed by the governor for a term of two years each. The said appointive members are to receive as compensation such per diem and travel expenses as is now provided by law. All the powers and duties heretofore con-

ferred by law upon the state textbook purchase and rental commission, together with such other powers and duties as may be conferred by the provisions of this article, shall be vested in the state textbook commission. The expenses and costs of the commission for carrying out the provisions of this article are to be paid out of the appropriation made available in section 5754(13). (1937, c. 169, s. 1.)

§ 5754(8). Duties of commission.—The state textbook commission is hereby authorized and empowered to administer funds and to establish rules and regulations necessary to:

(1) Acquire by contract and/or purchase such textbooks that are or may be on the adopted list of the state of North Carolina as the commission may find necessary to carry out the provisions of this article.

(2) Provide a system of distribution of said textbooks so that they may be available for the children of the public schools when this measure may be put into effect as hereinafter provided.

(3) Provide for the free use, including the proper care and return thereof, of elementary basal textbooks to such grades of the elementary public schools of North Carolina as may be determined by the state textbook commission. Title to said books shall be vested in the state. For the purposes of this article, the elementary grades shall be considered the grades from one to seven, inclusive. The basal elementary textbooks in the hands of the state textbook purchase and rental commission, when this measure is put in effect, shall become a part of the stock of books needed to carry out the provisions of this article.

(4) Provide books for high school children in the public high schools of North Carolina on a rental basis as now provided in chapter four hundred and twenty-two, Public Laws of one thousand nine hundred thirty-five [§§ 5754(1)-5754(6)]: Provided, that free basal books may be furnished to high school children if sufficient funds are available and if the commission finds it advisable to take such action.

(5) Provide supplementary readers for the elementary children in the public elementary schools of North Carolina on a rental basis, as provided for in chapter four hundred and twenty-two, Public Laws of one thousand nine hundred thirty-five.

(6) Provide and distribute all blanks, forms, and reports necessary to keep a careful record of all the books, including their use, state of repair and such other information as the commission may require. (1937, c. 169, s. 2.)

§ 5754(9). Legal custodians of books furnished by state.—The county board of education in each county administrative unit and the school governing board in each city administrative unit shall be designated the legal custodians of all books furnished by the state, either for free use or on a rental basis. It shall be the duty of the said boards to provide adequate and safe storage facilities for the proper care of said books. (1937, c. 169, s. 3.)

§ 5754(10). Duties and authority of superintendents of local administrative units; withholding salary for failure to comply with section.—It shall be the duty of the superintendent of each administrative unit as ex officio agent of the com-

mission to administer the provisions of this article and the rules and regulations of the state textbook commission, in so far as said article and said rules and regulations may apply to said unit. He shall also have authority to require the co-operation of principals and teachers to the end that the children may receive the highest possible service, and that all books and moneys may be properly accounted for. In the event any teacher or principal shall fail to comply with the provisions of this section, it shall be the duty of the superintendent to withhold the salary checks of said principal or teacher until the duties imposed hereby have been performed. (1937, c. 169, s. 4.)

§ 5754(11). Further funds made available.—Any unexpended portion of the appropriation and revenues provided for in chapter four hundred twenty-two, Public Laws of one thousand nine hundred thirty-five [§§ 5754(1)-5754(6)], shall be available to the commission during the next biennium for carrying out the provisions of this article, or of the provisions of said chapter not in conflict with the provisions of this article. These funds shall be in addition to the proceeds of bonds authorized by this article. (1937, c. 169, s. 5.)

§ 5754(12). Article supplemental; conflicting provisions repealed.—It is the purpose of this article to supplement the provisions of chapter four hundred twenty-two, Public Laws of one thousand nine hundred and thirty-five [§§ 5754(1)-5754(6)], not in conflict herewith, and any provisions of said chapter in conflict with the provisions hereof, are hereby repealed. (1937, c. 169, s. 6.)

§ 5754(13). Bond issue authorized.—To provide a fund for the purpose of purchasing books and carrying out the provisions of this article, the treasurer of the state is authorized and directed, by and with the consent of the governor and council of state, to issue and sell at one time, or from time to time, bonds of the state in an amount not exceeding one million five hundred thousand dollars (\$1,500,000.00). (1937, c. 169, s. 7.)

§ 5754(14). Coupon bonds; denominations; dates and rate of interest; maturity, etc.—The bonds authorized and directed to be issued by the preceding section shall be coupon bonds of such denomination, or denominations, as may be determined by said state treasurer, and shall bear such date or dates, and such rate or rates of interest not exceeding five per centum (5%) per annum, payable semi-annually, as may be fixed by the governor and council of state, and shall mature in equal annual installments beginning five years and ending twenty-four years from date. If all of such bonds shall not be issued at one time, the bonds issued at any one time shall mature as above provided. The bonds shall be signed by the governor of the state and state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone, or may have a facsimile of his signature printed, engraved, or lithographed thereon, and the said bonds shall in all other respects be in such form as the state treasurer may direct; said bonds shall be subject to registration as is now or may hereafter be provided by law for state bonds; and the coupons thereon shall, after maturity, be receivable in payment of all

taxes, debts, dues, licenses, fines and demands due the state of North Carolina, of any kind whatsoever. Before selling any of the bonds herein authorized to be issued, the state treasurer shall advertise the sale and invite sealed bids in such manner as in his judgment may seem to be most effectual to secure the par of said bonds at the lowest rate of interest. (1937, c. 169, s. 8.)

§ 5754(15). Bonds and coupons exempt from taxation; authorized investment for fiduciaries, etc.—The said bonds and coupons shall be exempt from all state, county or municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation; and it shall be lawful for all executors, administrators, guardians, or other fiduciaries generally, and all sinking fund commissioners, to invest in said bonds. (1937, c. 169, s. 9.)

§ 5754(16). Full faith and credit of state pledged for payment.—The full faith and credit and taxing power of the state are hereby pledged for the payment of the principal and interest of the bonds herein authorized. (1937, c. 169, s. 10.)

SUBCHAPTER XVII. STATE BOARD OF COMMERCIAL EDUCATION

Art. 45A. Requirement of Permit Bond

§ 5780(m1). Commercial college or business school defined.—A commercial college or business school shall be defined as follows: Any person, partnership, association of persons, or any corporation, or operators of correspondence schools within the state of North Carolina, which teaches, publicly, for compensation, any or all the branches of accounting, bookkeeping, stenotype, stenography, typing, telegraphy, and other commercial subjects which are usually taught in commercial colleges or business schools; provided, however, that any person or individual who undertakes to give instruction in the above subjects to five or less students shall not be construed as the operator of a commercial college or business school. (1935, c. 255, s. 1; 1937, c. 184.)

Editor's Note.—The 1937 amendment inserted the words "person" and "or operators of correspondence schools within the state of North Carolina," and added the proviso to this section.

§ 5780(m2). Securing permit before operating.—Any person, partnership, association of persons, or any corporation, or operators of correspondence schools within the state of North Carolina, which may desire to open a commercial college or to establish a branch college or school in this state for the purpose of teaching bookkeeping, stenography, stenotype, typing, telegraphy, and other courses which are usually taught in commercial colleges, before commencing business, must secure a permit from the state board of commercial education of the state of North Carolina authorizing such persons, partnership, association of persons or corporation to open and

conduct such commercial college or branch college or school. (1935, c. 255, s. 2; 1937, c. 184.)

Editor's Note.—The 1937 amendment made this section applicable to operators of correspondence schools.

§ 5780(m3). State board of commercial education created; membership.—The state board of commercial education shall consist of the director of the division of instructional service, the director of the division of vocational education and two persons who are owners and operators of duly licensed business or commercial schools which have been in operation within the state for five years, and the state superintendent of education, who will be chairman of the board and ex officio secretary. The two members who are commercial school owners or operators shall be appointed by the governor and shall serve for three years or until their successors have been appointed and taken office. (1935, c. 255, s. 2; 1937, c. 184.)

Editor's Note.—Prior to the 1937 amendment the board contained only one school owner or operator.

§ 5780(m4). Application for permit; investigation by county superintendent of schools; fees.—Application for such permit to open and conduct a business or correspondence school shall state specifically the name of such person, partnership or corporation, and said application shall be filed with the state board of commercial education at Raleigh. If, after due investigation on the part of said board, it is shown to the satisfaction of said board that said applicant is professionally qualified to conduct said school and possesses good moral character for fair and honest dealings, then said board shall approve said application and issue permit to said applicant.

(1937, c. 184.)

Editor's Note.—As the 1937 amendment changed only the first two sentences, the rest of the section is not set out.

§ 5780(m5). Execution of bond required; filing and recording.—Before the board of commercial education shall issue such permit, the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand (\$1,000) dollars, signed by a solvent guaranty company authorized to do business in the state of North Carolina or by two solvent sureties, payable to the clerk of the superior court of the county in which such college, branch college, or school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and all contracts, made and entered into by said college or branch college or school, acting by and through its officers and agents, with any student who desires to enter such college and to take any course in commercial training, and to pay back to such student all amounts collected for tuition and fees in case of failure on the part of the parties obtaining a permit from the board of commercial education to open and conduct a commercial college, or branch college or school, to comply with its contracts to give the instructions contracted for, and for the full period evidenced by such contract. Such bond shall be filed with the clerk of superior court of the county in which the college or branch or school executing the bond is located, and recorded by such clerk in a book provided for that purpose.

The requirement herein specified for giving the aforesaid bond of one thousand dollars (\$1,000.00)

shall apply to all commercial colleges, business schools and correspondence schools and branches thereof operating in North Carolina, and the said board of commercial education shall not issue any permit or license to any person, firm, or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of superior court has been filed with said board of commercial education. Operators' bonds of one thousand dollars (\$1,000.00) each shall be required for each branch of such commercial colleges, business schools, or correspondence schools operated within the state by any person, partnership, or corporation. (1935, c. 255, s. 4; 1937, c. 184.)

Editor's Note. — Prior to the 1937 amendment, which added the second paragraph, bond of guaranty company was required.

§ 5780(m8). Institutions exempted.—The provision of this article shall not apply to any established university, professional, or liberal arts college, regular high school or any state institution which has heretofore adopted or which may hereafter adopt one or more commercial courses, provided the tuition fees and charges, if any, made by such university, college, high school or state institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, or high school; but the provisions of this article shall apply to all commercial colleges, business schools and correspondence schools operated within the state of North Carolina as commercial institutions. (1935, c. 255, s. 7; 1937, c. 184.)

Editor's Note.—Prior to the 1937 amendment established commercial colleges having one or more commercial courses were also exempted.

§ 5780(m10). Solicitors.—All persons soliciting students within the state of North Carolina for commercial colleges, business schools or correspondence schools located within or without the state of North Carolina, shall be required to secure on July first of each year hereafter an annual license from the board of commercial education, such license to cost two dollars (\$2.00). When application is made for such license by a solicitor he shall submit to said board for its approval a copy of the contract offered prospective students and used by his said school, together with advertising material and other representations made by said school to its students or prospective students. When a license is issued to such solicitor he shall receive a license card permitting him to solicit students for his school, but such license shall be issued only on an annual basis expiring June thirtieth of each year and must be renewed to entitle such solicitor to solicit students thereafter. Every commercial college, business school, or correspondence school employing such solicitors shall be responsible for the acts, representations and contracts made by its solicitors. Any person soliciting students for any such schools without first having secured a license from the board of commercial education shall be guilty of a misdemeanor and be punishable by a fine of fifty dollars (\$50.00) or thirty days imprisonment, or both, at the discretion of the court. (1937, c. 184.)

SUBCHAPTER XIX. SCHOOL LAW OF 1935

§§ 5780(41)-5780(77): Superseded by Public Laws 1937, c. 394, codified as §§ 5780(84)-5780(121).

SUBCHAPTER XXI. SCHOOL LAW OF 1937

§ 5780(84). Biennial appropriation for eight months' school term.—The appropriation made under title nine of "an act to make appropriations for the maintenance of the state's departments, bureaus, institutions, and agencies, and for other purposes" of the sum of twenty-three million, seven hundred ninety-six thousand, three hundred sixty-seven dollars (\$23,796,367.00), "for the support of the eight months term public schools" for the year ending June thirtieth, one thousand nine hundred thirty-eight, and the sum of twenty-four million, nine hundred eighty-six thousand, one hundred sixty dollars (\$24,986,160.00) "for the support of the eight months term public schools" for the year ending June thirtieth, one thousand nine hundred thirty-nine, shall be apportioned for the operation of an eight months state-wide school term as hereinafter provided. (1937, c. 394, s. 1.)

§ 5780(85). State school commission; membership; appointment; terms of office and compensation; powers and duties; executive secretary; cost and expenses.—The state school commission shall be constituted as follows: The lieutenant-governor as ex officio chairman, the state superintendent of public instruction as vice-chairman, the state treasurer and one member from each congressional district to be appointed by the governor. The said appointive members shall serve for a period of two years from the time of their appointment and receive such compensation as now provided by law. All the powers and duties heretofore conferred by law upon the state board of equalization, and the state school commission, together with such other powers and duties as may be conferred by this subchapter, shall be vested in the state school commission. The said school commission may appoint an executive secretary who shall select other employees necessary for the proper administration of this subchapter to be approved by the state school commission, subject to provisions of chapter two hundred seventy-seven, Public Laws of one thousand nine hundred thirty-one [§ 7521(k) et seq.]. The cost and expenses of said commission shall be paid out of the appropriation made for the public schools as provided in section 5780(84). (1937, c. 394, s. 2.)

§ 5780(86). Administration of funds for eight months' term.—In addition to the duties and powers vested in the state school commission as set out in section 5780(85), together with such other powers as may be conferred by law, it shall be the duty of the said commission, in accordance with the provisions of this subchapter, to administer funds for the operation of the schools of the state for one hundred sixty days on standards to be determined by said commission and within the total appropriation made available by the general assembly. The state school commission shall designate from its membership an executive committee, composed of the lieutenant governor, the state superintendent of public instruction, the state treasurer, and two other members, with whom the ex-

ecutive secretary may confer with reference to the administration of this subchapter when the commission is not in session. The purpose of this provision is to provide an agency for consultation and advice as to questions arising between meetings of the commission, and for the purpose of effectuating a closer unity between the different agencies dealing with the schools. The secretary shall keep a record of the proceedings of any meetings of the executive committee in the same manner as proceedings of the full commission are kept and recorded. (1937, c. 394, s. 3.)

§ 5780(87). Length of term; discontinuance for low average attendance; opening dates; re-allocation of appropriation not used.—The six months' school term required by article nine of the constitution is hereby extended to embrace a total of one hundred sixty days of school in order that there shall be operated in every county and district in the state, which shall request the same, a uniform term of eight months: Provided, that the state school commission, or the governing body of any administrative unit, may suspend the operation of any school or schools in such unit, not to exceed a period of forty days of said consolidated term, when in the sound judgment of said commission, or the governing body of any administrative unit, the low average in any school does not justify its continuance, or necessity may require it: Provided, that all schools served by the same school bus or busses shall have the same opening date: Provided further, that any balance of the state funds which may have been allocated to operate the said consolidated term, not actually operated as planned, shall be and remain in the state treasury and become a part of the state school fund for the next succeeding year. (1937, c. 394, s. 4.)

§ 5780(88). "School month" defined; salaries of teachers, etc., payable monthly.—A school month shall consist of four weeks and not less than twenty teaching days, no day of which shall be a Saturday, unless in case of emergency, and subject to the approval of the local committee and the superintendent of the administrative unit; and salary warrants for the payment of all state teachers, principals, and others employed for the school term shall be issued each school month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month. (1937, c. 394, s. 4.)

§ 5780(89). Counties as administrative units; supervision of district organization; minimum number of pupils for establishing schools; city administrative units; consolidation of units.—The state school commission, in making provision for the operation of the schools, shall classify each county as an administrative unit and shall, with the advice of the county board of education, make a careful study of the existing district organization in each county administrative unit, and may modify such district organization when deemed necessary for the economical administration and operation of the state school system, and shall determine whether there shall be operated in such district an elementary or a union school. Provisions shall not be made for a high school with an average daily

attendance of less than sixty pupils, nor an elementary school with an average daily attendance of less than twenty-five pupils, unless a careful survey by the state superintendent of public instruction and the state school commission reveals that geographic or other conditions make it impracticable to provide for them otherwise.

City administrative units as now constituted shall be dealt with by the state school authorities in all matters of school administration in the same way and manner as are county administrative units: Provided, that in all city administrative units as now constituted the trustees of the said special charter district, and their duly elected successors, shall be retained as the governing body of such district; and the title to all property of the said special charter district shall remain with such trustees, or their successors: Provided, that nothing in this subchapter shall prevent city administrative units, as now established, from consolidating with the county administrative unit in which such city administrative unit is located, upon petition of the trustees of the said city administrative unit and the approval of the county board of education and the county board of commissioners in said county: provided further, that in the event of such consolidation, all property vested in the trustees of such city administrative units shall be transferred to and become the property of the county board of education in said county: Provided further, that nothing in this subchapter shall affect the right of any special charter district, or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by existing law and nothing herein shall be construed to restrict the county board of education and/or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by existing law. (1937, c. 394, s. 5.)

§ 5780(90). Administrative officers of school units; superintendents; selection of principals, teachers and other employees in city units.—The administrative officer in each of the units now designated shall be a county superintendent of schools for a county administrative unit and a city superintendent of schools for a city administrative unit. The salaries of county superintendents and city superintendents shall be in accordance with a state standard salary schedule to be fixed and determined by the state board of education and the state school commission as provided for in section 5780(98): Provided, that it shall be lawful for the county superintendent of schools in any county, with the approval of the state superintendent of Public Instruction, to serve as principal of a high school of said county; and the sum of not exceeding three hundred dollars (\$300.00), to be paid from state instructional service funds, may be added to his salary and shall be included in the budget approved by the state school commission: Provided further, that a county superintendent may also be elected and serve as a city superintendent in any city administrative unit in the county which he serves as county superintendent: Provided further, that a county superintendent may serve as welfare officer and have such additional compensation as may be allowed by the county commissioners of such county, to be paid

from county funds, subject to the approval of the state school commission.

At a meeting to be held the first Monday in April, one thousand nine hundred thirty-seven, or as soon thereafter as practicable, and biennially thereafter during the month of April, the various county boards of education shall meet and elect a county superintendent of schools, subject to the approval of the state superintendent of public instruction and the state school commission, who shall take office July first and shall serve for a period of two years, or until his successor is elected and qualified. A certification to the county board of education by the state superintendent of public instruction showing that the person proposed for the office of county superintendent of schools is a graduate of a four years standard college, or at the present time holds a superintendent's certificate, and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious disease, shall make any citizen of the State eligible for this office.

In all city administrative units the superintendent of schools shall be elected by the board of trustees, or other school governing agency of such unit, to serve for a period of two years; and the qualifications, approval, and date of election shall be the same as for county superintendents. The city superintendent is hereby ex officio secretary to the governing body of said city administrative unit.

At its first regular meeting in April, or as soon thereafter as practicable, the board of trustees, or other governing board of a city administrative unit, shall elect principals, teachers, and other necessary employees of the schools within said unit on the recommendation of the city superintendent. (1937, c. 394, s. 6.)

§ 5780(91). School district committees; advisory boards.—At the first regular meeting during the month of April, one thousand nine hundred thirty-seven, or as soon thereafter as practicable, and biennially thereafter, the county boards of education shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three nor more than five persons for each school district, whose term of office shall be for two years: Provided, that in the event of death or resignation of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term. The district committee shall elect the principals for the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The principals of the districts shall nominate and the district committees shall elect the teachers for all the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. In the event the local school authorities herein provided for are unable to agree upon the nomination and election of teachers, the matter shall be appealed to the state superintendent of public instruction, who shall have authority to certify the name of a person to the county superintendent of schools to be employed for the ensuing school term. All principals and teachers shall enter into a written contract upon forms to be fur-

nished by the state superintendent of public instruction before becoming eligible to receive any payment from state funds. It shall be the duty of the county board of education in a county administrative unit, and of the governing body of a city administrative unit, to cause written contracts on forms to be furnished by the state to be executed by all teachers and principals elected under the provisions of this subchapter before any salary vouchers shall be paid: Provided further, that the county board of education may appoint an advisory committee of three members for each school building in the said school district, who shall care for the school property, and perform such other duties as may be defined by the county board of education. (1937, c. 394, s. 7.)

§ 5780(92). Organization statement and allotment of teachers.—On or before the twentieth day of May in each year the several administrative officers shall present to the state school commission a certified statement showing the organization of the schools in their respective units, together with such other information as said commission may require. The organization statement as filed for each administrative unit shall indicate the length of term the state is requested to operate the various schools for the following school year, and the state shall base its allotment of funds upon such request. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the state school commission may promulgate, the state school commission shall determine for each administrative unit, by districts and races, the number of elementary and high school teachers to be included in the state budget.

It shall be the duty of the governing body in each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the state school commission to make changes in the allocation of teachers to meet requirements of the said unit. (1937, c. 394, s. 8.)

§ 5780(93). Items of school expenditures.—The appropriation of state funds, as provided under the provisions of this subchapter, shall be used for meeting the costs of the operation of the public schools, as determined by the state school commission, for the following items:

1. General Control:
 - a. Salaries of superintendents
 - b. Travel of superintendents
 - c. Salaries of clerical assistants for superintendents
 - d. Office expense of superintendents
 - e. Per diem county boards of education in the sum of one hundred (\$100.00) dollars to each county
 - f. Audit of school funds
2. Instructional Service:
 - a. Salaries for white teachers, both elementary and high school
 - b. Salaries for colored teachers, both elementary and high school
 - c. Salaries of white principals
 - d. Salaries of colored principals
 - e. Instructional supplies

3. Operation of Plant:
 - a. Wages of janitors
 - b. Fuel
 - c. Water, light and power
 - d. Janitor's supplies
 - e. Telephone expense
4. Auxiliary Agencies:
 - a. Transportation—
 - (1) Drivers, and contracts
 - (2) Gas, oil and grease
 - (3) Mechanics
 - (4) Parts, tires, and tubes
 - (5) Replacement busses
 - (6) Compensation for injuries and/or death of school children as now provided by law
 - b. Libraries
 - c. Health

In allotting funds for the items of expenditures hereinbefore enumerated, provisions shall be made for a school term of only one hundred sixty days. (1937, c. 394, s. 9.)

§ 5780(94). Effecting economies; increase or decrease in salary schedule; use of school buildings for other purposes.—The state school commission shall effect all economies possible in providing state funds for the objects of general control, operation of plant, and auxiliary agencies, and after such action shall have authority to increase or decrease on a uniform percentage basis the salary schedule of teachers, principals, and superintendents in order that the appropriation of state funds for the public schools may insure their operation for the length of term provided in this subchapter: Provided, however, the state school commission and county boards of education shall have power and authority to promulgate rules by which school buildings may be used for other purposes. (1937, c. 394, s. 9.)

§ 5780(95). Expenditure for maintenance of plant and fixed charges; taxes permitted.—The objects of expenditure designated as maintenance of plant and fixed charges shall be supplied from funds required by law to be placed to the credit of the public school fund of the county and derived from fines, forfeitures, penalties, dog taxes and poll taxes, and from all other sources except state funds: Provided, that when necessity shall be shown, the state school commission may approve the use of such funds in any administrative unit to supplement any object or item of the current expense budget; and in such cases the tax levying authorities of the county administrative unit shall make a sufficient tax levy to provide the necessary funds for maintenance of plant, fixed charges, and capital outlay: Provided further, that the tax levying authorities in any county administrative unit, with the approval of the state school commission, may levy taxes to provide necessary funds for teaching vocational agriculture and home economics and trades and industrial vocational subjects supported in part from federal vocational educational funds: Provided, that nothing in this subchapter shall prevent the use of federal and/or privately donated funds which may be made available for the operation of the public schools under such regulations as the state board of education may provide. (1937, c. 394, s. 9.)

§ 5780(96). State budget estimate.—The state budget estimate shall be determined by the state school commission for each county and city administrative unit by ascertaining the sum of the objects of expenditure according to and within the limits fixed by this subchapter, and within the meaning of the rules and regulations promulgated by the state school commission; and the certification of same shall be made to each county superintendent, city superintendent, and the state superintendent of public instruction on or before June first of each year. (1937, c. 394, s. 10.)

§ 5780(97). Salary costs.—Upon receipt of notice from the state school commission of the total number of teachers, by races and for county and city administrative units separately, the state superintendent of public instruction shall then determine, in accordance with the schedule of salaries established, the total salary cost in each and every administrative unit for teachers, principals, and superintendents to be included in the state budget for the next succeeding fiscal year for the consolidated school term as herein defined. This amount, as determined from a check of the costs for the preceding year with adjustments resulting from changes in the allotment of teachers, shall be certified to the state school commission, together with the number of elementary and high school teachers and principals employed in accordance with the provisions of this subchapter, separately by races, and for city and county administrative units. (1937, c. 394, s. 11.)

§ 5780(98). Standard salary schedule to be fixed; summer school requirement suspended.—The state board of education and the state school commission shall fix and determine a state standard salary schedule for teachers, principals, and superintendents, which shall be the maximum standard state salaries to be paid from state funds to the teachers, principals, and superintendents; and all contracts with teachers and principals shall be made locally by the county boards of education and/or the governing authorities of city administrative units, giving due consideration to the peculiar conditions surrounding each employment, the competency and experience of the teacher or principal, the amount and character of work to be done, and any and all other things which might enter into the contract of employment, and shall also take into consideration the grade of certificate such teacher or principal holds: Provided, however, that the compensation contracted to be paid out of the state funds to any teacher, principal, or superintendent shall be within the maximum salary limit to be fixed by the state board of education and the state school commission, as above provided, and within the allotment of funds as made to the administrative unit for the item of instructional salaries: Provided further, that no teacher or principal shall be required to attend summer school during the years one thousand nine hundred thirty-seven and one thousand nine hundred thirty-eight, and the certificate of such teacher or principal as may have been required to attend such school shall not lapse, but shall remain in full force and effect, and all credits earned by summer school and/or completing extension course or

courses shall not be impaired, but shall continue in full force and effect. (1937, c. 394, s. 12.)

§ 5780(99). Notification as to election or rejection.—Any teacher or principal desiring election or re-election to a position in the state school system shall file his or her application in writing with the county superintendent of instruction or the head of administrative unit. It shall be the duty of such county superintendent or administrative head to notify applicant of election or rejection within a period of thirty days. (1937, c. 394, s. 12.)

§ 5780(100). No rule as to marriage enforced.—In the employment of teachers, no rule shall be made or enforced on the ground of marriage or non-marriage. (1937, c. 394, s. 12.)

§ 5780(101). Principals allowed.—In all schools with fewer than fifty teachers allowed under the provisions of this subchapter, the principal shall be included in the number of teachers allowed. In schools with fifty or more teachers, one whole-time principal shall be allowed; and for each forty teachers in addition to the first fifty, one additional whole-time principal, when and if actually employed, shall be allowed: Provided, that in the allocation of state funds for principals the salary of white principals shall be determined by the number of white teachers employed in the white schools, and the salary of colored principals shall be determined by the number of colored teachers employed in the colored schools. (1937, c. 394, s. 13.)

§ 5780(102). Local supplements.—The county board of education in any county administrative unit and the school governing board in any city administrative unit, with the approval of the tax levying authorities in said county or city administrative unit and the state school commission, in order to operate schools of a higher standard than that provided by state support in said administrative unit having a school population of one thousand or more, but in no event to provide for a term of more than one hundred eighty days, may supplement the funds from state or county allotments available to said administrative unit: Provided, that before making any levy for supplementing said allotments, an election shall be held in said administrative unit to determine whether there shall be levied a tax to provide said supplemental funds, and to determine the maximum rate which may be levied therefor. Upon the request of the county board of education in a county administrative unit and/or the school governing authorities in a city administrative unit, the tax levying authorities of such unit shall provide for an election to be held under laws governing such elections as set forth in articles 23, 24 and 26 of chapter ninety-five of the Consolidated Statutes of North Carolina, volume three: Provided, that the rate voted shall remain the maximum until revoked or changed by another election: Provided further, that nothing herein contained shall be construed to abolish any city administrative unit heretofore established under chapter four hundred forty-five of Public Laws of one thousand nine hundred thirty-five [§ 7472(1) et seq.]. (1937, c. 394, s. 14.)

§ 5780(103). Local budgets.—a. The request

for funds to supplement state school funds, as permitted under the above condition, shall be filed with the tax levying authorities in each county and city administrative unit on or before the fifteenth day of June on forms provided by the state school commission. The tax levying authorities in such units may approve or disapprove this supplemental budget in whole or in part, and upon the approval being given, the same shall be submitted to the state school commission, which shall have the authority to approve or disapprove any object or item contained therein. In the event of approval by the state school commission, the same shall be shown in detail upon the minutes of said tax levying body, and a special levy shall be made therefor, and the tax receipt shall show upon the face thereof the purpose of said levy.

b. In the same manner and at the same time, each county and/or city administrative unit may file a capital outlay budget, subject to the approval of the tax levying authorities and the state school commission.

c. In the same manner and at the same time, each county and/or city administrative unit shall file a debt service budget, which shall include debt service budgets of special bond tax districts, as set forth in section sixteen of this subchapter, and which shall be subject to the approval of the tax levying authorities in each such unit and the state school commission: Provided, that nothing in this subchapter shall prevent counties, local taxing districts and/or special charter districts from levying taxes to provide for debt service requirements.

The tax levying authorities in each of the above named units filing budgets from local funds shall report their action on said budgets on or before the fifteenth day of July, and the same shall be reported to the state school commission on or before the first day of August. The action of the state school commission on all requests for local funds budgets shall be reported to boards of education and/or school governing authorities of city administrative units and the tax levying authorities in such units on or before the first day of September.

All county-wide current expense school funds shall be apportioned to county and city administrative units and distributed monthly on a per capita enrollment basis. All county-wide capital outlay school funds shall be apportioned to county and city administrative units on the basis of budgets submitted by said units to the county commissioners and for the amounts and purposes approved by said commissioners; said capital outlay funds to be disbursed in the same manner as provided for school funds: Provided, that funds derived from payments on insurance losses shall be used in the replacement of buildings destroyed, or in the event such buildings are not replaced said funds shall be used to reduce the indebtedness of the administrative unit to which said payment has been made, or for other capital outlay purposes within said units. All county-wide debt service funds shall be apportioned to county and city administrative units and distributed monthly on the basis of the per capita enrollment of the preceding year: Provided, that the payments to any administrative unit shall not exceed the actual

debt service needs of said unit, including sinking fund requirements. (1937, c. 394, s. 15.)

§ 5780(104). District bonded debts unaffected by divisions or consolidations; designation of districts.—If a boundary, territorial district, or unit in which a special bond tax has heretofore been voted or in any way assumed prior to July first, one thousand nine hundred thirty-three, has been or may be divided or consolidated, and the whole or a portion of which has been or may be otherwise integrated with a new district so established under any reorganization and/or redistricting, such territorial unit, boundary, or district, special taxing or special charter, which has been abolished for school operating purposes, shall remain as a district for the purpose of the levy and collection of the special taxes theretofore voted in any unit, boundary, or district, special taxing or special charter, for the payment of bonds issued and/or other obligations so assumed, the said territorial boundary, district, or unit shall be maintained until all necessary taxes have been levied and collected therein for the payment of such bonds and/or other indebtedness so assumed. Such boundary, unit, or district shall be known and designated as the "Special Bond Tax Unit" of county. (1937, c. 394, s. 16.)

§ 5780(105). Lien of taxes for operating costs; disposition of unused collections; lien of unpaid teachers' vouchers; special taxes already voted.—All uncollected taxes which have been levied in the respective school districts for the purpose of meeting the operating costs of the schools shall remain as a lien against the property as originally assessed and shall be collectible as are other taxes so levied, and, upon collection, shall be made a part of the debt service fund of the special bond tax unit, along with such other funds as may accrue to the credit of said unit; and in the event there is no debt service requirement upon such district, all amounts so collected for whatever purpose shall be covered into the county treasury to be used as a part of the county debt service for schools: Provided, that unpaid teachers' vouchers for the year in which the tax was levied shall be a prior lien: Provided further, that nothing in this subchapter shall be construed as abolishing special taxes voted in any city administrative unit since July first, one thousand nine hundred thirty-three. (1937, c. 394, s. 16.)

§ 5780(106). Operating budgets.—It shall be the duty of the county board of education in each county and the school governing authorities in each city administrative unit, upon receipt of the tentative allotment of state funds for operating the schools and the approval of all local funds budgets, including supplements to state funds for operating schools of a higher standard, funds for extending the term, fund for debt service, and funds for capital outlay, to prepare an operating budget on forms provided by the state and file the same with the state superintendent of public instruction and the state school commission on or before the first day of October. Each operating budget shall be checked by the state school authorities to ascertain if it is in accordance with the allotment of state funds and the approval of local funds; and when found to be in accordance with same, shall

be the total school budget for said county or city administrative unit. (1937, c. 394, s. 17.)

§ 5780(107). Bonds for protection of school funds.—The state school commission, subject to the approval of the local government commission, shall determine and provide all bonds necessary for the protection of the state school funds.

That the tax levying authorities in each county and city administrative unit, subject to the approval of the local government commission, shall provide such bonds as the state school commission may require for the protection of county and district school funds. (1937, c. 394, s. 18.)

§ 5780(108). Disbursement of state funds.—Payment of the state fund to the county and city administrative units may be made in monthly installments, at such time and in such amounts as may be practical to meet the needs and necessities of the eight months' school term in the various county and city administrative units: Provided, that prior to the payment of any monthly installment, it shall be the duty of the county board of education or the board of trustees to file with the state superintendent of public instruction and the state school commission a certified statement of all salaries, together with all other obligations that may be due and payable, said statement to be filed on or before the fifteenth day of each month next preceding the maturity of the obligations.

When it shall appear to the state school commission from said certified statement that any amounts are due and necessary to be paid, such amounts shall be certified to the state superintendent, who shall draw a requisition on the state auditor covering the same; and upon receipt of notice from the state treasurer showing the amount placed to their credit, the duly constituted authorities may issue state warrants in the amount so certified: Provided, that no funds be released for payment of salaries of administrative officers of county or city units if any reports required to be filed by the state school authorities are more than thirty days over-due. (1937, c. 394, s. 19.)

§ 5780(109). Method of disbursing school funds.—The school funds shall be paid out as follows:

1. State School Funds.—School funds shall be released only on warrants drawn on the state treasurer signed by the chairman and the secretary of the county board of education for county administrative units, and by the chairman and the secretary of the board of trustees for city administrative units, and countersigned by such officer as the county government laws may require.

2. County and District Funds.—All county and district funds shall be paid out only on warrants signed by the chairman and secretary of the board of education for counties and the chairman and the secretary of the board of trustees for city administrative units, and countersigned by such officer as the county government laws may require. (1937, c. 394, s. 20.)

§ 5780(110). Audit.—The state school commission, in co-operation with the state auditor, shall cause to be made an audit of all school funds, state, county, and district; and the cost of said audit shall be borne by each fund audited in proportion to the total funds audited, as determined

by the state school commission. The tax levying authorities for county and city administrative units shall make provision for meeting their proportionate part of the cost of making said audit, as provided in this subchapter. (1937, c. 394, s. 21.)

§ 5780(111). Workmen's compensation and sick leave.—The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the state school commission shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as applicable to such employees. The state school commission is hereby authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not exceeding five days and to promulgate rules and regulations providing for necessary substitutes on account of said sick leave. (1937, c. 394, s. 22.)

§ 5780(112). Age requirement for enrollment in public schools.—Children to be entitled to enrollment in the public schools for the school year one thousand nine hundred thirty-seven, thirty-eight, and each year thereafter, must be six years of age on or before October first of the year in which they enroll, and must enroll during the first month of the school year. (1937, c. 394, s. 22½.)

§ 5780(113). Purchase of equipment and supplies.—It shall be the duty of the county boards of education and/or the governing bodies of city administrative units to purchase all supplies and materials in accordance with contracts and/or with the approval of the state division of purchase and contract. (1937, c. 394, s. 23.)

§ 5780(114). School transportation.—The control and management of all facilities for the transportation of public school children shall be vested in the state of North Carolina under the direction and supervision of the state school commission, which shall have authority to promulgate rules and regulations governing the organization, maintenance, and operation of the school transportation facilities. The tax levying authorities in the various counties of the state are authorized and empowered to provide in the capital outlay budget adequate buildings and equipment for the storage and maintenance of all school busses. Provisions shall be made for the adequate inspection each thirty days of each vehicle used in the transportation of school children, and a record of such inspection shall be filed in the office of the superintendent of the administrative unit. That it shall be the duty of the administrative officer of each administrative unit to require an adequate inspection of each bus at least once each thirty days, the report or reports of which inspection shall be filed with the administrative officers. Every principal upon being advised of any defect by the bus driver shall cause a report of such defect to be made to this administrative officer immediately, whose duty it shall be to cause such defect to be remedied before such bus can be further operated. The use of school busses shall be limited to the transportation of children to and from school for the regularly organized school day. (1937, c. 394, s. 24.)

§ 5780(115). Bus routes.—In establishing the route to be followed by each school bus operated

as a part of the state school transportation system, in all schools where transportation is now or may hereafter be provided, the state school commission shall, in co-operation with the district principal and the district committee, unless road or other conditions make it inadvisable, route the busses so as to get within one mile of all children who live more than one and one-half miles from the school to which they are assigned: Provided further, that all routes so established shall be subject to the approval of the county board of education and the committee of each district. The state shall not be required to provide transportation for children living within one and one-half miles of the school in which provision for their instruction has been made. All bus routes thus established shall be filed with the county board of education prior to the opening of school, and in the event any of said routes are disapproved by the county board of education, notice of same shall be filed with the state school commission and a hearing on their appeal shall be heard within thirty days thereafter by the executive committee provided for in section 5780(86). (1937, c. 394, s. 25.)

§ 5780(116). Purchase of new equipment.—It shall be the duty of the tax levying authorities in the various counties, and they are hereby authorized, empowered, and directed to make provisions in the capital outlay budget for the purchase of new busses needed to relieve over-crowding, and to provide for the transportation of children not transported during the school year one thousand nine hundred thirty-six, one thousand nine hundred thirty-seven, the county boards of education shall determine when the busses are over-crowded; and the state shall provide for the operation of all new busses purchased by the counties. It shall be the duty of the state of North Carolina to purchase all school busses used as replacements for old public owned busses which were operated by the state during the school year one thousand nine hundred thirty-six, thirty-seven. It shall be the duty of the state school commission to promulgate rules and regulations that will insure the greatest safety for the children possible, including a standard signaling device for giving the public due notice that the bus is making a stop. Before purchasing any new school busses, the state school commission shall cause to be made a thorough study of the most modern materials and construction for insuring the safest equipment possible within the funds available. (1937, c. 394, s. 26.)

§ 5780(117). Bus drivers.—The authority for selecting and employing the drivers of school busses shall be vested in the principal or superintendent of the school at the termination of the route, subject to the approval of the school committeemen or trustees of said school and the county or city superintendent of schools: Provided, that each driver shall be selected with a view to having him located as near the beginning of the truck route as possible; and it shall be lawful to employ student drivers wherever such is deemed advisable. The salary paid each employee in the operation of the school transportation system shall be in accordance with a salary schedule adopted by the state school commission

for that particular type of employee. (1937, c. 394, s. 27.)

§ 5780(118). Contract transportation.—In counties where school transportation is provided by contract with private operators, the state shall provide funds for operating costs on the standards adopted for public-owned busses, and it shall be the duty of the tax levying authorities in the various counties to provide in the capital outlay budget the additional funds necessary to pay contracts. (1937, c. 394, s. 28.)

§ 5780(119). Co-operation with highway and public works commission in maintenance of equipment.—The state school commission is hereby authorized to negotiate with the highway and public works commission in co-ordinating all facilities for the repair, maintenance and upkeep of equipment to be used by the state school commission in the school transportation system. In all cases where this is done the state highway and public works commission shall be reimbursed in the amount of the actual cost involved for labor and parts to be determined by an itemized statement filed with the state school commission. (1937, c. 394, s. 29.)

§ 5780(120). Lunch rooms in schools.—In such cases as may be deemed advisable by the trustees or school committee in any school, and where the same may be deemed necessary because of the distance of the said school from places where meals may be easily obtained, it shall be permissible for the said trustees and the said school committees, as a part of the functions of the said public schools, to provide cafeterias and places where meals may be sold, and operate or cause the same to be operated for the convenience of teachers, school officers, and pupils of the said schools. There shall be no personal liability upon the said trustees and school committees, or members thereof, arising out of the operation of the said eating places, and it is understood and declared that the same are carried on and conducted in connection with the public schools, and because of the necessities arising out of the consolidation of the said schools and the inconvenience and interruption of the school day caused by seeking meals elsewhere: Provided, that no part of the appropriation made by the state for the public schools shall be expended for the operation of said cafeterias or eating places, nor shall the provisions of section 5780(111) apply to the employees of the cafeterias or eating places, except such persons as are regularly employed otherwise in the schools. (1937, c. 394, s. 30.)

§ 5780(121). Accounting as to special school funds; diversion made misdemeanors.—It shall be the duty of the county superintendent of public instruction to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes are correctly accounted for to the school fund each year, and to examine the records of the several courts of the county, including courts of justices of the peace, at least once every three months to see that all fines, forfeitures and penalties, and any other special funds accruing to the county school fund, are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or

fines are not correctly and promptly accounted for to the school fund, it shall be his duty to make prompt report thereof to the state school commission and also to the solicitor of the superior court holding the courts in the district: Provided, that in any county having a county auditor, county accountant, or county manager, that the duties enjoined under the provisions of this section shall be performed by one of said officers; and if there are two or more such officers in any county, then by one of such officers in the order named.

It shall be unlawful for any of the proceeds of poll taxes, dog taxes, fines, forfeitures, and penalties to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor, and, upon conviction, shall be punishable by fine or imprisonment in the discretion of the court: Provided, however, that this section shall not be construed as making unlawful the use of such portions of said funds for other purposes as may be provided by the provisions of this subchapter. (1937, c. 394, s. 31.)

CHAPTER 96

EDUCATIONAL INSTITUTIONS OF THE STATE

Art. 1. University of North Carolina

§ 5786(1). Certain unclaimed bank deposits to university.—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such deposit shall be received by it, then the same shall be held by it absolutely. The receipt of the University of North Carolina of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. Provided, that this section shall apply only to deposits of five dollars (\$5.00) and less. (1937, c. 400.)

Editor's Note.—Section 5786 requires that funds be turned over to the university when unclaimed "for five years after the same shall become due," thus raising a question as to when bank deposits may be said to be "due" within the meaning of the act. This section, limited to trifling accounts puts that problem out of view by using the date of the last debit or credit and the unavailability of the depositor as the tests. The section is specific and mandatory, though no penalty is imposed for non-compliance and it would appear to be within the jurisdiction of the commissioner of banks to issue regulations on the subject under the provisions of § 222(a), 15 N. C. Law Rev., No. 4, pp. 350, 351.

Art. 1A. Consolidation of State Institutions into University of North Carolina

§ 5805(e). Present boards to hold on till July 1, 1932; new board of 100 members; commissioners of public charities.—

The members of the board of trustees of the University or other state institutions of North

Carolina shall be deemed commissioners of public charities within the meaning of the proviso to section seven of Article XIV of the Constitution of North Carolina. (1931, c. 202, s. 5; 1937, c. 139.)

Editor's Note.—The 1937 amendment directed that the above sentence be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

In effect this amendment amounts to a legislative declaration that trustees of the university and of other state institutions are to be exempt from the constitutional ban on dual office-holding. Just what institutions are embraced by the words "other state institutions" is not clear. Nor is the status of their trustees. That of the university's trustees, however, is relatively free from doubt. 15 N. C. Law Rev., No. 4, p. 348.

Art. 12. The Caswell Training School

§ 5912(1). **Certain acts prohibited, for protection of inmates.**—From and after the passage of this section it shall be unlawful:

(a) For any person to advise, or solicit, or to offer to advise, or solicit, any inmate of said school to escape therefrom;

(b) For any person to transport, or to offer to transport, in automobile or other conveyance, any inmate of said school to or from any place: Provided, this shall not apply to the superintendent and teachers of said school, or to employees or any other person acting under the superintendent and teachers thereof;

(c) For any person to engage in, or to offer to engage in, prostitution with any inmate of said school;

(d) For any person to receive, or to offer to receive, any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;

(e) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable him or her to conceal his or her identity.

The term "inmate" as used in this section shall be construed to include any and all boys and girls, men or women, committed to, or received into, said Caswell training school under the provisions of the law made and provided for the receiving and committing of persons to said Caswell training school; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse.

Any person who shall knowingly and wilfully violate sub-sections (a) and (b) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; that any person who shall knowingly and wilfully violate sub-sections (c), (d) and (e) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1937, c. 235.)

§ 5912(2). **Payment for student work.** — The superintendent of Caswell training school is hereby authorized and empowered in his discretion, when funds are available, to pay children of the school for work done at the Caswell training school: Provided, that the amount of money so expended shall not exceed one thousand dollars (\$1,000.00) in any one fiscal year. (1937, c. 275.)

Art. 13. Morrison Training School

§ 5912(a). **Creation of corporation; name; powers.**—A corporation, to be known and designated "The Morrison Training School," is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations, hold real estate by purchase or gift, and do all other things necessary and requisite to be done for the care, discipline and training of negro boys which may be received by said corporation. (1921, c. 190, s. 1; 1937, c. 146.)

As to conditional release and final discharge of inmates, see §§ 7362(p), 7362(q).

Editor's Note.—The 1937 amendment struck out the words "The State Training School for Negro Boys" and substituted therefor the words "The Morrison Training School."

Art. 16. Educational Advantages for World War Orphans

§ 5912(m). **Free tuition, room rent and board; certificate of post commander; statement from veterans administration.**—Any child who has been a resident of North Carolina for two years, and whose father was killed in action or died from wounds or other causes while a member of the armed forces of the United States between April sixth, one thousand nine hundred seventeen, the date of the declaration of war, and July second, one thousand nine hundred twenty-one, the legal termination thereof, shall be entitled to and granted a scholarship of free tuition in any of the state's educational institutions. This scholarship shall not extend for a longer period than four academic years.

In addition to the scholarship of free tuition above provided, there shall also be granted to any child needing financial assistance who is embraced within the classification covered by this section, free room rent and board in any of the state's educational institutions which provide rooms and eating halls operated by the institution. All applicants desiring to share the benefits of this paragraph and who are qualified to meet the entrance requirements shall submit to the educational institution they desire to enter a certificate of financial need duly executed by commanding officer of American Legion Post located within same county as applicant and by the clerk of the superior court of said county. If no Legion Post is located in said county, then the certificate may be signed by commanding officer of nearest American Legion Post.

Said applicant shall also furnish statement from United States veterans administration showing that the applicant comes within the class designated as war orphans and as herein described. (1937, c. 242, s. 1.)

§ 5912(n). **Approval and payment of amounts charged by institution.**—Any state educational institution furnishing room and board to any child or children, as provided in this article, may submit a statement showing the amount of such room and board to the director of the state budget, and, after checking the correctness of the amounts charged, the director of the budget shall submit such statements to the governor and council of state for payment from the emergency and contingent fund of the state. (1937, c. 242, s. 2.)

CHAPTER 97

ELECTIONS

SUBCHAPTER I. GENERAL ELECTIONS

Art. 3. State Board of Elections

§ 5923. Duties of the state board of elections.

Cited in *Swaringen v. Poplin*, 211 N. C. 700, 191 S. E. 746.

Art. 4. County Board of Elections

§ 5927. Duties of county boards of elections.

Cited in *Swaringen v. Poplin*, 211 N. C. 700, 191 S. E. 746.

Art. 5. Precinct Election Officers and Election Precincts

§ 5928. Appointment of registrars and judges of elections; qualifications.

Editor's Note.—For amendatory act relating to Durham county, see Public Laws 1937, c. 299.

§ 5932. Compensation of precinct officers.

Editor's Note.—For amendatory act applicable only to Mecklenburg county, see Public Laws 1937, c. 382.

§ 5933. Duties of registrars and judges of election.

Cited in *Swaringen v. Poplin*, 211 N. C. 700, 191 S. E. 746.

Art. 6. Qualification of Voters

§ 5939. Voter must be able to read and write; exceptions.

The provisions of this section are valid, since such qualification is prescribed by the Constitution, art. VI, § 4, and authority therein granted the legislature by art. VI, § 3, to enact general legislation to carry out the provisions of the article. *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

And the provision placing the duty upon the registrar is logical and reasonable, and does not constitute class legislation, since its provisions apply to all classes, and there being an adequate remedy at law if a registrar, in bad faith or in abuse of power or discretion, should refuse to register a person duly qualified. *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

Art. 7. Registration of Voters

§ 5948. Registration books deposited with clerk of court.

Editor's Note.—Public Laws 1937, c. 404, s. 4, provides that the provisions of this section "shall not apply to Randolph county, and hereafter it shall be the duty of the county board of elections, after any primary or election, to determine whether the registration and poll books shall be deposited for the safe keeping with the clerk of the superior court of the county or with the chairman of the county board of elections."

Art. 9. Absent Voters

§ 5960. Absent from county; or physically unable to attend; certificate, etc.

Editor's Note.—Public Laws 1937, c. 129, amended c. 364, Public Laws 1933, so as to make the provisions of said chapter as to absentee voting apply to Macon, Clay, Cherokee and Graham counties. So now in such counties it is unlawful to recall absentee ballots delivered to registrar.

Public Laws 1935, c. 223, exempting Haywood county from the provisions of this section, was repealed by Public Laws 1937, c. 101.

For amendatory act relating to Randolph county, see Public Laws 1937, c. 404, repealing Public Laws 1933, c. 83.

Public Laws 1937, c. 66, amended this article as to Transylvania county.

Public Laws 1937, c. 373, repealed this article as to Cumberland county.

Public Laws 1937, c. 410, repealing this article as to Caldwell county, provides: "This act shall not apply to soldiers in time of war or persons in the navy or military services, school teachers teaching outside of said county and state or federal government officials and employees."

Article Applicable to Municipal Elections.—This article is in pari materia with article 18 (§§ 6055(a-1) et seq.) of this chapter, and when so construed it is manifest that the

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absentee ballot law is applicable to municipal elections. *Phillips v. Slaughter*, 209 N. C. 543, 183 S. E. 897.

SUBCHAPTER II. PRIMARY ELECTIONS

Art. 17. Primary Elections

§ 6022. Notices and pledges of candidates; with whom filed.—Every candidate for selection as the nominee of any political party for the offices of governor and all state officers, justices of the supreme court, the judges of the superior court, United States senators, members of congress, and solicitors to be voted for in any primary election shall file with and place in the possession of the state board of elections, by six o'clock p. m. on or before the tenth Saturday before such primary election is to be held, a notice and pledge in the following form, the blanks being properly filled in and the same signed by the candidate:

"I hereby file my notice as a candidate for the nomination as in the primary election to be held on I affiliate with the party, and I hereby pledge myself to abide by the results of said primary, and to support in the next general election all candidates nominated by the party."

Every candidate for selection as the nominee of any political party for the office of state senator in a primary election, member of the house of representatives, and all county and township offices shall file with the place in the possession of the county board of elections of the county in which they reside by six o'clock p. m. on or before the sixth Saturday before such primary is to be held a like notice and pledge. (1915, c. 101, s. 6; 1917, c. 218; 1923, c. 111, s. 13; 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364.)

The 1937 amendment substituted "tenth" for "seventh" formerly appearing in the ninth line of this section, and "sixth" for "fourth" formerly appearing in the next to the last line.—Ed. note.

§ 6023. Filing fees required of candidates in primary.

For amendatory act relating only to Mecklenburg county, see Public Laws 1937, c. 382.—Ed. note.

§ 6054. Certain counties excepted.

Editor's Note.—Public Laws 1935, c. 141, repealing Public Laws 1933, c. 327, and placing Avery county under the primary law for the nomination of candidates for county offices, was repealed, in so far as it applied to Democratic and independent candidates, by Public Laws 1937, c. 263, which provides that nomination of Democratic candidates for county offices and the general assembly shall be made by a convention.

Public Laws 1937, c. 423, struck out Catawba from the list of excepted counties in this section, so as to place said county "under the provisions of the state-wide primary law for the nomination of county officers and members of the general assembly: Provided, however, no second primary shall be held in said county for the nomination of said officers, but the candidate receiving the highest number of votes shall be declared the nominee of his political party for said office."

Public Laws 1935, c. 391, striking out Watauga from the list of excepted counties in this section, was repealed by Public Laws 1937, c. 264, thus providing for the nomination of county officers, including the recommendation of the members of the board of education of said county, in a county convention.

SUBCHAPTER III. GENERAL ELECTION LAWS

Art. 18. Election Laws of 1929

§ 6055(a1). Former laws repealed; enactments in lieu thereof.

For an amendment of Public Laws 1933, c. 557, and Pub-

lic Laws 1935, c. 259, applicable only to Ashe county, see Public Laws 1937, c. 170.—Ed. note.

This article is to be construed in pari materia with article 9 (§§ 5960 et seq.) of this chapter. Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

Cited in Harris v. Miller, 208 N. C. 746, 182 S. E. 663.

§ 6055(a2). Applicable to all subdivisions of state.

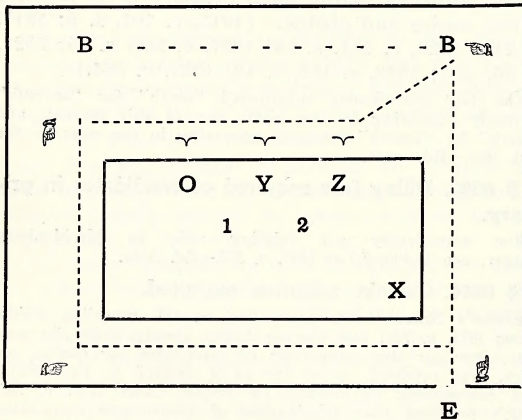
Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

§ 6055(a3). Preparation and distribution; definitions.

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

§ 6055(a19). No loitering or electioneering allowed within 50 feet of polls; regulations for voting at polling places; banners or placards; guard rail; diagram.—No person shall, while the polls are open at polling places, loiter about or do any electioneering within such polling place or within fifty feet thereof, and no political banner, poster, or placard shall be allowed in or upon such polling places during the day of the election. The election officials and ballot boxes shall at all times be in plain view of the qualified voters who are present, and a guard rail shall be placed not nearer than ten feet nor further than twenty feet from the said election officials and ballot boxes.

The arrangement of the polling place shall be substantially according to the diagram, and shall conform as nearly thereto as the building or other place in which said election is held will permit:



E

E. Entrance to voting place.

X. Judge with ballots and box for spoiled ballots.

B. Voting booths.

Y. Polls book.

Z. Ballot box.

O. Box for stubs.

1, 2. Other election officials.

Direction of entry and exit of voter.

(1929, c. 164, s. 19.)

This section was reprinted to correct an error of arrangement in the original.

§ 6055(a24). Who allowed in room or enclosure; peace officers.

Editor's Note.—For amendatory act applicable only to Cumberland county, see Public Laws 1937, c. 426.

§ 6055(a26). Assistance to voters.

For amendatory act applicable only to Cumberland county, see Public Laws 1937, c. 426.—Ed. note.

§ 6055(a27). Aid to persons suffering from physical disability or illiteracy.

For amendatory act applicable only to Cumberland county, see Public Laws 1937, c. 426. For act exempting Cherokee county, see Public Laws 1935, c. 461, amended by Public Laws 1937, c. 391.—Ed. note.

§ 6055(a33). Hours of election.—In all primaries and in all municipal and local elections in this state the polls shall be open between the hours of seven a. m. and seven p. m., Eastern Standard Time: Provided, that no poll shall remain open after sunset: Provided, further, that in all statewide general elections the polls shall be open from sunrise until sunset. (1937, cc. 258, 457.)

Editor's Note.—Prior to the 1937 amendment this section provided that in all elections the polls should be open from sunrise until sunset.

§ 6055(a39). Ballots furnished absentee electors; when deemed voted before sunset; deposit in boxes.

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

§ 6055(a42). Definitions as applied to municipal primaries and elections.

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897.

Art. 19. Corrupt Practices Act of 1931

§ 6055(a54). Compelling self-incriminating testimony; person so testifying excused from prosecution.

For a general discussion of the limits to self-incrimination, see 15 N. C. Law Rev., No. 3, p. 229.

CHAPTER 97A

ENGINEERING AND LAND SURVEYING

§ 6055(q). Land surveying.

Editor's Note.—Public Laws 1937, c. 110, applicable to Cumberland county only, added the words "and running levels" at the end of the first sentence.

CHAPTER 100

GENERAL ASSEMBLY

Art. 1. Apportionment of members

§ 6088. House of representatives.

Editor's Note.—The name of Bertie county does not appear in this section because it was omitted in Public Laws 1921, c. 144, from which the section was accurately copied. Apparently this omission was an inadvertence on the part of the legislature.

Art. 5A. Information to Committees

§ 6104(a). State officers, etc., upon request, to furnish data and information to legislative committees.—All officers, agents, agencies, and departments of the state are required to give to any committee of the general assembly, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the general assembly or any of its committees or chairmen thereof. (Resolution 19, 1937, p. 927.)

CHAPTER 101

GEOLOGICAL SURVEY AND FORESTS,
ETC.Art. 1(A). Department of Conservation and
Development

§ 6122(j). Powers and duties of the board.

For act authorizing disposition of mineral deposits of state in state waters, see Public Laws 1937, c. 385. For act authorizing acquisition of lands located within, or in close proximity to, federal land use projects, see Public Laws 1937, c. 228.—Ed. note.

§ 6122(j)1. Advertising of state resources and advantages.—It is hereby declared to be the duty of the department of conservation and development to map out and to carry into effect, under the direction and with the approval of the director of the budget, a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the state of North Carolina and all of its resources. (1937, c. 160.)

Art. 3. State Forests, Parks, etc., by Donation,
Lease or Purchase

§ 6126(1). Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition.

Editor's Note.—For act relating to acquisition of lands for Morrow Mountain State Park, see Public Laws 1937, c. 141.

Art. 4. Private Lands Designated as State Forests

§ 6131. Powers of state forest wardens.

For an article on the law of arrest in North Carolina, see 15 N. C. Law Rev., No. 2, p. 101.

Art. 5. Protection against Forest Fires

§ 6137. Powers of forest wardens to prevent and extinguish fires.

Cited in Tomlinson v. Norwood, 208 N. C. 716, 182 S. E. 659.

CHAPTER 103

HOSPITALS FOR THE INSANE

Art. 2. Officers and Employees

§ 6181. Superintendent may appoint employees as policemen, who may arrest without warrant.

For an article on the law of arrest in North Carolina, see 15 N. C. Law Rev., No. 2, p. 101.

CHAPTER 103A

HOUSING AUTHORITIES AND PROJECTS

Art. 2. Municipal Cooperation and Aid

§ 6243(30). Finding and declaration of necessity.

For an analysis of this article, see 13 N. C. Law Rev., No. 4, p. 379.

CHAPTER 106

INSURANCE

SUBCHAPTER I. INSURANCE DEPARTMENT

Art. 2. Insurance Commissioner

§ 6274. Authority over all insurance companies; no exemptions from license.

Cited in Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733.

Art. 3. General Regulations for Insurance

§ 6287. State law governs insurance contracts.

Place Determined by Application.—

In accord with original. See Cordell v. Brotherhood of Locomotive Firemen, etc., 203 N. C. 632, 182 S. E. 141.

Effect of Stipulation Making Policy a Foreign Contract.—In accord with original. See Cordell v. Brotherhood of Locomotive Firemen, etc., 208 N. C. 632, 182 S. E. 141.

Laws in Force Become Part of Insurance Contract.—Laws in force at the time of executing a policy of insurance are binding on the insurer and become a part of the insurance contract. Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733.

Applied in Wells v. Jefferson Standard Life Ins. Co., 211 N. C. 427, 190 S. E. 744.

§ 6288. No insurance contracts except under this chapter.

Applied in Wells v. Jefferson Standard Life Ins. Co., 211 N. C. 427, 190 S. E. 744.

§ 6289. Statements in application not warranties.

Material Representations.—

Under this section, a failure to disclose the fact that insured had had some time previous to her application one-half degree of fever due to a mild form of malaria and from which she had entirely recovered, taken in connection with the further fact that she was at the time of the application in sound health and otherwise insurable, was held not material. Wells v. Jefferson Standard Life Ins. Co., 211 N. C. 427, 430, 190 S. E. 744.

Fraud is not essential under this section and as a general rule recovery will not be allowed if the statements made and accepted as inducements to the contract of insurance are false and material. Wells v. Jefferson Standard Life Ins. Co., 211 N. C. 427, 429, 190 S. E. 744.

False Material Representations, Although Not Fraudulent, Void Policy.—For the reason that the representations were material to the issuance of the certificate and notwithstanding the evidence for the plaintiff which tended to show that the representations, although false, were not fraudulent, under the provisions of this section, and of the certificate, the certificate of insurance was null and void and of no effect. Itman v. Sovereign Camp, W. O. W., 211 N. C. 179, 181, 189 S. E. 496.

Where insured stated she was not pregnant and died of childbirth in less than nine months, it is held that this statement does not preclude recovery, in view of the evidence that insurer issued its policies on the life of the insured when it knew she was 33 years of age, had been married about a year, and that ordinarily pregnancy might be expected, and it required an additional premium on that account. Wells v. Jefferson Standard Life Ins. Co., 211 N. C. 427, 430, 190 S. E. 744.

Burden Is on Insurer to Prove Misrepresentation.—By offering in evidence the policy of insurance and the insurer's admission of its execution and delivery and of the death of the insured, the beneficiaries made out a prima facie case, and the burden was then upon the insurer to rebut it by proof of the alleged misrepresentation. And though the beneficiaries, in anticipation of the defense, elected to offer testimony as to misrepresentations, this did not change this rule as to the burden of proof. Wells v. Jefferson Standard Life Ins. Co., 211 N. C. 427, 431, 190 S. E. 744.

§ 6291. Insurance as security for a loan by the company.

This section was held not to exempt insurance companies from the provisions of § 2305 and § 2306, relating to usury, the purport and effect of the section being merely to allow insurance companies to require as a condition precedent to the loan of money that the borrower take out a policy of insurance and assign same as security for the loan. Cowan v. Security Life, etc., Co., 211 N. C. 13, 188 S. E. 812.

If this section did provide that insurance companies should be exempt from § 2305 and § 2306, it would be void as in violation of Art. I, sec. 7, of the Constitution. Id.

A ten-year endowment policy comes within the provisions of this section, when such endowment policy provides that the face amount thereof shall be paid to the beneficiary if insured dies during the ten-year period while the policy is in force. Id.

§ 6294. Liabilities and reserve fund determined.

This section in no way impinges on the Constitution.

Hardware Mut. Fire Ins. Co. v. Stinson, 210 N. C. 69, 78, 185 S. E. 449.

Unearned premiums are a liability of the company. *Id.*

§ 6294(1). Corporation or association maintaining office in state required to qualify and secure license.—Any corporation or voluntary association, other than an association of companies, the members of which are licensed in this state, issuing contracts of insurance and maintaining a principal, branch, or other office within this state, whether soliciting business in this state or in foreign states, shall qualify under the insurance laws of this state applicable to the type of insurance written by such corporation or association and secure license from the insurance commissioner as provided under chapter one hundred and six of the Consolidated Statutes of one thousand nine hundred and nineteen and all amendments thereof, and the officers and agents of any such corporation or association maintaining offices within this state and failing to qualify and secure license as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 39.)

§ 6304. Payment of premium to agent valid; obtaining by fraud a crime.

Where a policy provided that premiums were payable to a duly authorized agent only in exchange for insurer's official receipt and where plaintiff's evidence showed payment of a note given for a premium to insurer's agent without obtaining the note or insurer's official receipt, and there was no evidence that insurer ever received any part of the payment, in insured's action to recover the premium paid after insurer had declared the policy forfeited, it was held that insurer's motion to nonsuit was properly allowed, payment to the agent under the circumstances not constituting payment to insurer. *Mills v. New York Life Ins. Co.*, 209 N. C. 296, 183 S. E. 289.

Art. 5. License Fees and Taxes

§ 6318. Schedule of license fees, taxes, and charges.

Editor's Note.—This section, except as it concerns fixed charges and fees, is superseded every two years through the enactment of the Revenue Bill. See § 7880(116).

SUBCHAPTER II. INSURANCE COMPANIES

Art. 8. Mutual Insurance Companies

§ 6348. Policyholders are members of mutual fire companies.

This section is an enabling statute to protect a trustee from liability. *Fuller v. Lockhart*, 209 N. C. 61, 70, 182 S. E. 733.

The policyholders in a mutual fire insurance company are not stockholders therein, and are in no way liable for the debts of the company beyond the contingent liability fixed in the policy. *Id.*

This and § 6351 do not indicate legislative intent to prohibit county boards of education insuring property in mutual companies by failing to expressly grant such authority. *Id.*

§ 6351. Dividends and assessments; liability of policyholders.

This section provides the terms and method of how mutual insurance can operate in this state. Those who purchase mutual insurance have their rights fixed. *Fuller v. Lockhart*, 209 N. C. 61, 70, 182 S. E. 733.

Art. 8A. Conversion of Stock Corporations into Mutual Corporations

§ 6355(1). Domestic stock life insurance corporations authorized to convert into mutual corporations; procedure.—Any domestic stock life insurance corporation may become a mutual life insur-

ance corporation, and to that end may carry out a plan for the acquisition of shares of its capital stock: Provided, however, that such plan (first) shall have been adopted by a vote of a majority of the directors of such corporation; (second) shall have been approved by a vote of the holders of two-thirds of the stock outstanding at the time of issuing the call for a meeting for that purpose; (third) shall have been submitted to the insurance commissioner and shall have been approved by him in writing, and (fourth) shall have been approved by a majority vote of the policyholders (including, for the purpose of this article, the employer or the president, secretary or other executive officer of any corporation or association to which a master group policy has been issued, but excluding the holders of certificates or policies issued under or in connection with a master group policy) voting at said meeting, called for that purpose, at which meeting only such policyholders whose insurance shall then be in force and shall have been in force for at least one year prior to such a meeting shall be entitled to vote; notice of such a meeting shall be given by mailing such notice, postage prepaid, from the home office of such corporation at least thirty days prior to such meeting to such policyholders at their last known post-office addresses: Provided, that personal delivery of such written notice to any policyholder may be in lieu of mailing the same; and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan: Provided, however, that policyholders may vote in person, by proxy, or by mail; that all such votes shall be cast by ballot, and a representative of the insurance commissioner shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the said representative and to the corporation the results thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the insurance commissioner; that all necessary expenses incurred by the insurance commissioner or his representative shall be paid by the corporation as certified to by said commissioner. Every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the commissioner: Provided, that neither such plan, nor any payment thereunder, nor any payment not fixed by such plan, shall be approved by the commissioner, if the making of such payment shall reduce the assets of the corporation to an amount less than the entire liabilities of the corporation, including therein the net values of its outstanding contracts according to the standard adopted by the insurance commissioner, and also all other funds, contingent reserves and surplus which the corporation is required by order or direction of the insurance commissioner to maintain, save so much of the surplus as shall have been appropriated or paid under such plan. (1937, c. 231, s. 1.)

For a discussion of act from which this article is codified, see 15 N. C. Law Rev., No. 4, p. 359.

§ 6355(2). Stock acquired to be turned over to voting trust until all stock acquired; dividends repaid to corporation for beneficiaries.—If a domestic stock life insurance corporation shall determine to become a mutual life insurance corporation it may, in carrying out any plan to that end under the provisions of section 6355(1), acquire any shares of its own stock by gift, bequest or purchase. And until all such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to not less than three nor more than five trustees, and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote until all of the capital stock of such corporation is acquired, when the entire capital stock shall be retired and canceled; and thereupon, unless sooner incorporated as such, the corporation shall be and become a mutual life insurance corporation without capital stock. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under section 6355(1). Said trustees shall file with the corporation and with the insurance commissioner a verified acceptance of their appointments and declaration that they will faithfully discharge their duties as such trustees. After the payment of such dividends to stockholders or former stockholders as may have been provided in the plan adopted under section 6355(1), all dividends and other sums received by said trustees on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are or may become policyholders of said corporation and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation, and be apportionable accordingly as a part of said surplus among said policyholders. (1937, c. 231, s. 2.)

Art. 15. Reciprocal or Inter-Insurance Exchanges

§ 6398. Exchange of insurance contracts authorized; power of attorney.—

The attorney in fact for each of such exchanges shall be required to obtain a written power of attorney executed by each of the subscribers and have the same in his or its possession before any contracts of insurance of any kind or description shall be issued or renewed to subscribers, and a full copy of the provisions of the power of attorney used at the exchange and on file with the insurance commissioner under the requirements of section six thousand three hundred ninety-nine, subsection four, shall be incorporated into and made a part of all contracts or policies issued to subscribers in this state. (1913, c. 183, ss. 1, 2; 1937, c. 130.)

Editor's Note.—The 1937 amendment directed that the above provision be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

Art. 16. Foreign Insurance Companies

§ 6411. Conditions of admission.

Cited in *Fuller v. Lockhart*, 209 N. C. 61, 182 S. E. 733.

SUBCHAPTER III. FIRE INSURANCE

Art. 17. General Regulations of Business

§ 6418. Policies limited as to amount and term.

Construction of Policy.—Where plaintiffs' property consisted of one building containing three stores, and the insurer contended that the policy issued covered only one of the stores and not the entire building, it appearing that that amount of the policy was greatly in excess of the value of the one store, but was about the value of the entire building, and that insured paid the premium based upon the amount for which the policy was issued, it was held that in construing the policy it would not be presumed that insurer charged a premium based upon a valuation greatly in excess of the value of the property insured in violation of this and § 6435, but that the policy covered the entire building. *Williams v. Greensboro Fire Ins. Co.*, 209 N. C. 763, 185 S. E. 21.

§ 6433. Punishment for issuing fire policies contrary to law.

See the note to § 6418 in this supplement.

Art. 18. Fire Insurance Policies

§ 6435. Items to be expressed in policies; agent to inspect risks.

See the note to § 6418 in this supplement.

§ 6437. Form of standard policy.

I. THE APPLICATION AND CONTRACT IN GENERAL.

Agreements in the policy contrary to statutory provisions are void. *Buckner v. United States Fire Ins. Co.*, 209 N. C. 640, 184 S. E. 520.

IV. LIABILITY OF COMPANY IN CASE OF LOSS.

Subrogation.—

Upon paying the loss by fire, insurer is entitled to subrogation to the rights of insured against the third person tort-feasor causing the loss, to the extent of the amount paid, both by provision of this section and under equitable principles. *Buckner v. United States Fire Ins. Co.*, 209 N. C. 640, 184 S. E. 520.

This section does not provide that insurer should be subrogated to rights of the mortgagee against the mortgagor, and under the facts of this case insurer is not entitled to the subrogation claimed upon any equitable principle, and insurer's subrogation receipt from the mortgagee is not valid or binding as against the owner mortgagor. *Id.*

SUBCHAPTER IV. LIFE INSURANCE

Art. 21. General Regulations of Business

§ 6460. Medical examination required.

Scope of Section.—Where the application contained false representations as to matters other than the physical condition of the applicant, this section, if applicable at all, is not determinative of the question whether the insurer was liable on a policy issued in reliance on false though not fraudulent representations. *Inman v. Sovereign Camp, W. O. W.*, 211 N. C. 179, 181, 189 S. E. 496.

Policy Can Not Be Avoided unless Misrepresentations Were Fraudulently Made.—Where the jury finds that insured in a policy issued without medical examination was suffering with certain diseases stipulated in the policy as grounds for avoidance, but that insured did not procure the policy by false and fraudulent statements, insurer may not avoid liability under the policy, the provisions of the policy in conflict with the statute being unavailing to insurer. *Eckard v. Metropolitan Life Ins. Co.*, 210 N. C. 130, 185 S. E. 671.

But Fraud Need Not Be Alleged in Direct Terms.—Where in an action upon an insurance policy it was conceded without deciding that the provisions of this section cover an application for reinstatement of a lapsed policy as well as an initial contract, it was held that the insurer's answer set out elements of fraudulent misrepresentation sufficient to raise an issue, it not being necessary that fraud be alleged in direct terms. *Petty v. Pacific Mut. Life Ins. Co.*, 210 N. C. 500, 187 S. E. 816.

Art. 22B. Mutual Burial or Assessment Insurance Associations

§ 6476(aa). Mutual burial associations placed under supervision of insurance commissioner.—All

mutual burial associations now organized and operating in the state of North Carolina, and all mutual burial associations hereafter organized within the state of North Carolina or operating within the state, shall be under the supervision and control of the insurance commissioner of the state of North Carolina, such control to be that provided for hereinafter in this law. (1937, c. 239, s. 1.)

Editor's Note.—The early history of mutual insurance, particularly of the fraternal variety, is a sad story of bad financing. Insolvencies, all too frequent, were disastrous to policyholders. This has been a lesson well learned. The instant statute, with its strict provisions for continued solvency, coupled with penalties for violation, is the commendable fruit of that lesson. This statute, if properly enforced, would render well-nigh impossible the existence of wildcat burial associations, but for one omission. It unfortunately applies only to mutual organizations. 15 N. C. Law Rev., No. 4, p. 359.

§ 6476(bb). Separate branches required for white and colored races.—All burial associations now operating in the state of North Carolina and all burial associations hereafter organized and operated in the state of North Carolina, for the benefit of both races, shall maintain and operate two separate branches, and the provisions of this law shall apply to each branch as a separate association, except as provided in section 6476(11). (1937, c. 239, s. 2.)

§ 6476(cc). Requirements as to rules and by-laws.—All burial associations now operating within the state of North Carolina and all burial associations hereafter organized and operating within the state of North Carolina shall have and maintain rules and by-laws embodying in substance the following:

Article 1. The name of this association shall be (here insert name), which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purpose for which it has been authorized to operate, shall be to provide a plan for the payment of only one funeral benefit for each member of this association, which benefit must be one funeral in merchandise and service, and in no case shall any cash payment be made, except as written in the certificate and as hereinafter provided for in this law, by assessment, such funeral benefit to be in the amount of one hundred dollars (\$100.00) for persons of the age ten years and over and in the amount of fifty dollars (\$50.00) for persons under the age of ten years.

Article 3. Any person of the white (colored) race who has passed their first birthday and who has not passed their sixty-fifth birthday, and who is in good health and not under treatment of any physician, may become a member by the payment of a membership fee of twenty-five cents (25c).

Article 4. The annual meeting of the association shall be held at (insert here the place, date, and hour).

Each member shall have one vote at said annual meeting, and fifteen members of said association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years and/or until his or her successor shall have been elected and qualified. Any member of the board of directors who fail to maintain his or her

membership, as provided elsewhere in these rules and by-laws, shall be dropped from the list of directors, and a director shall be appointed by the secretary of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association; and it shall be the duty of the board of directors, in annual meeting, to elect a president, vice-president and secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the membership, and such secretary-treasurer need not necessarily be a member of the board of directors. The secretary-treasurer shall be the only paid officer of the association, and his compensation shall be set by the board of directors. The duties of the secretary-treasurer shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times, and he shall be chargeable with the duty of faithfully preserving and applying all moneys coming into his hands by virtue of said office. The president, vice-president and secretary shall constitute a board of control who shall direct the affairs of the association in accordance with these articles and by-laws, subject to such modification as may be made by act of the general assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid or provided. The books of the association shall be open at all times to the inspection of the officers of the association, and subject to the inspection of the insurance commissioner of the state of North Carolina or his duly authorized agent or deputy.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any such officer for good cause shown: Provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule (or in multiples thereof) at the age of entry of the member: Provided, those members joining at ages under ten shall be charged with the assessment for age ten when they reach their tenth birthday:

Assessment rate for age groups:

First to tenth birthday.....five cents (5c)
Tenth to thirtieth birthday.....ten cents (10c)
Thirtieth to fiftieth birthday...twenty cents (20c)
Fiftieth to sixty-fifth birthday...thirty cents (30c)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing, and the frequency of the assessments will be governed by the death rate within the association.

Article 7. No benefit will be paid for natural death occurring within thirty days from the date

of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers—the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within thirty days after notice shall be in bad standing and, unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may, within ninety days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments and provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within thirty days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family, and who, with his family, have become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial service for a deceased member. The service shall be in keeping with the services and casket, sold at the same price, similar to that provided and charged by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the funeral and burial service provided in article nine hereof shall be rendered by (give name of funeral director and town), which funeral director is designated in these rules and by-laws as the official funeral director of this association, and such funeral director shall be, by the secretary-treasurer of this association, immediately notified upon the death of any member, and upon the death of any member it shall be the duty of his or her nearest relative to notify the secretary-treasurer of the as-

sociation of the death of such member. In the event a member in good standing shall die at a place beyond the territory served by the above named funeral director, the secretary of this association, being notified of such death, shall cause the deceased to receive a funeral and burial service equal to that provided for in these by-laws. The benefits provided for are to be payable to the funeral director rendering such funeral and burial service, which payment the secretary-treasurer is authorized to make. If the secretary-treasurer of the association shall fail, on demand, to provide the benefits as listed in article nine of these rules and by-laws by arrangement with the official funeral director serving the community in which the services are required, then the benefits shall be paid in cash to the representative of the deceased qualified under law to receive such payments.

Article 11. If the proceeds of one assessment on the entire membership produces more than enough for burial or burials, on account of which said assessment is made, the balance shall be placed in the treasury of the association to apply on future burials. Assessments shall be made in such multiples of the assessment rate as is necessary to provide a fund to take care of anticipated deaths until the next assessment period. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of one assessment on the entire membership does not prove sufficient at any time to yield the benefit provided for in these by-laws, then the secretary-treasurer shall notify the insurance commissioner who shall be authorized, unless the membership is increased to that point where such assessment is sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13. All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed twenty-five per cent of the assessments collected: Provided, the entire amount of the membership fee may be used for expenses, if necessary.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds per cent of the membership of said association.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under article three of these by-laws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two separate burial associations, and upon evidence that membership is maintained contrary to this article, the secretary-treasurer may call upon such member to forfeit all benefits and fees paid in either one or the other of the associa-

tions: Provided, that in the event a person dies, and if being a member of more than one association, the association not called on to render the funeral and burial service shall be relieved of any claim or demand on account of membership in such association.

Article 18. Each year before the annual meeting of the membership of this association the association shall cause to be mailed to each member a statement showing the total income collected, expenses paid and burial benefits provided for the year next past (giving the names of each person buried): Provided, a statement mailed to the head of a family shall be regarded as notice to each member of such family holding membership in the association.

Article 19. These rules and by-laws shall not be modified or abridged except by act of the general assembly of North Carolina. (1937, c. 239, s. 3.)

§ 6476(dd). Unlawful to operate without written authority of insurance commissioner.—It shall be unlawful for any person, firm, corporation, association or organization to organize, operate or in any way solicit members for a burial association, or for membership or participation in any plan, scheme, system or device similar to a burial association without written authority of the North Carolina insurance commissioner, and any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$50.00) or thirty days in jail, or both, in the discretion of the court: Provided, however, the insurance commissioner shall not withhold authority for the organization or operation of a bona fide burial association, unless it shall be found and established to the satisfaction of the said insurance commissioner that the person or persons applying for authority to organize and operate such bona fide burial association is disqualified under law. (1937, c. 239, s. 4.)

§ 6476(ee). Penalty for failure to operate in substantial compliance with law.—Any burial association or other organization, or official thereof, or any other person who operates or allows to be operated a burial association on any plan, scheme or by-laws not in substantial compliance with the by-laws set forth in section 6476(cc), the insurance commissioner shall be authorized to revoke any authority or license granted for the operation of any burial association, and any convicted of the violation of this section shall be guilty of a misdemeanor, shall be fined not less than fifty dollars (\$50.00) and/or thirty days in jail, or both in the discretion of the court. (1937, c. 239, s. 5.)

§ 6476(ff). Penalty for wrongfully inducing person to change membership.—Any burial association official, agent or representative thereof, or any person who uses fraud or makes any promises not a part of the printed by-laws, or offers any rebate, gratuity or refund to cause a member of one association to change membership to another association shall be deemed guilty of a misdemeanor, and upon conviction shall have his or her license revoked, and shall be fined not less than fifty dollars (\$50.00) and/or thirty days in jail, or both, in the discretion of the court. (1937, c. 239, s. 6.)

§ 6476(gg). Penalty for making false and fraudulent entries.—Any burial association official who makes, or allows to be made, any false entry on the books of the association with intent to deceive or defraud any member thereof, or with the intent to conceal from the insurance commissioner or his deputy or agent the true status of the association, shall be guilty of a misdemeanor, and upon conviction be fined not less than fifty dollars (\$50.00) and/or thirty days in jail, or both, in the discretion of the court. (1937, c. 239, s. 7.)

§ 6476(hh). Accepting application without collecting fee.—Any burial association official, agent or representative or any other person who accepts an application for membership in any association without collecting the membership fee from any person making such application for membership shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars (\$50.00) and/or thirty days in jail, or both, in the discretion of the court. (1937, c. 239, s. 8.)

§ 6476(ii). Removal of secretary-treasurer for failure to maintain proper records.—Any burial association secretary or secretary-treasurer who fails to maintain records to the minimum standards required by the insurance commissioner shall be brought before a special meeting of the membership, which meeting shall be called by the president or vice-president of the association, and unless such corrections shall be made as are satisfactory to the board of directors of such association, within such time as the said board shall require, the said secretary or secretary-treasurer shall be removed from office and another elected in his stead by the board of directors. (1937, c. 239, s. 9.)

§ 6476(jj). Penalty for failure to make proper assessments.—Any burial association officer who accepts donations from any source, or who contributes money or funeral services, or in any way fails to assess for the amount needed to pay death losses and allowable expenses shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars (\$50.00) and/or thirty days in jail, or both, in the discretion of the court. (1937, c. 239, s. 10.)

§ 6476(kk). Right of appeal upon revocation of license.—Upon the revocation of any license or authority by the insurance commissioner, under any of the provisions of this law, the said association or individuals whose license have been revoked shall have right to appeal from said revocation to the superior court of Wake county, North Carolina. (1937, c. 239, s. 10a.)

§ 6476(II). Loss reserve; deposit with insurance commissioner of securities.—Section six thousand three hundred and sixty of the Consolidated Statutes of North Carolina shall, except as hereinafter amended, apply to mutual burial associations, which section is as follows: "Each domestic insurance company, association, order or fraternal benefit society doing business on the assessment plan shall collect and keep at all times in its treasury one regular loss assessment sufficient to pay one regular average loss, and no such company, association, order or fraternal benefit society shall be licensed by the insurance commissioner unless it makes and maintains with him

for the protection of its obligations at least five thousand dollars (\$5,000.00) in United States or North Carolina bonds, in farm loan bonds issued by federal loan banks or in the bonds of some city, county or town of North Carolina, to be approved by the insurance commissioner, or deposit with him a good and sufficient bond, secured by a deed of trust on real estate situated in North Carolina and approved by him, or by depositing with the insurance commissioner a bond in an amount not less than five thousand dollars (\$5,000.00), issued by any corporate surety company authorized to do business in this state: Provided, any burial association organized by the colored race shall execute a bond or deposit securities as above stated in the amount of not less than five thousand dollars (\$5,000.00)." The insurance commissioner is moreover authorized and empowered to accept in lieu of deposits a bond, or bonds, or cash, a deed of trust, either executed by the proper officers of the association or lawfully executed to such association, for such amount as is required hereinbefore. The insurance commissioner shall accept such conveyance if the value of the property included therein is sufficient, and it shall be sufficient if the penalty of the bond amounts to not more than sixty per cent of the value of said property. Be it further provided, that if such association operates a branch for members of the colored race, and the officers of both associations are the same, then the requirements of this section shall apply as of one association. (1937, c. 239, s. 11.)

§ 6476(mm). State-wide organization of associations.—It shall be lawful for the several mutual burial associations of the state of North Carolina, in good standing, to organize and provide for a state-wide organization of mutual burial associations, which organization shall be for the mutual and general suggestive control of mutual burial associations in the state of North Carolina. Such organizations shall have such name as agreed upon by the membership in meetings, and to be composed of members as are lawfully operating in the state and who pay their dues to such association. (1937, c. 239, s. 12.)

§ 6476(nn). Law constitutes exclusive authority.—This law shall be deemed and held exclusive authority for the organization and operation of mutual burial associations within the state of North Carolina, and shall not be subject to any other laws respecting insurance companies of any class. (1937, c. 239, s. 13.)

§ 6476(oo). Charter required.—No burial association shall operate in the state of North Carolina unless receiving a charter from the secretary of state, recommended by the insurance commissioner and approved by him. (1937, c. 239, s. 14.)

SUBCHAPTER VI. FRATERNAL ORDERS AND SOCIETIES

Art. 25. Fraternal Orders

§ 6493(a). Appointment of member as receiver or collector; appointee as agent for order or society; rights of members.

Where plaintiff's evidence showed that it had been the custom of defendant mutual benefit association's collecting agents, to collect dues after the due date but within thirty days thereof, that defendant's home office knew of this cus-

tom, and that insured made payment of the dues for the preceding month within thirty days of the due date and died prior to the customary time for the collection of dues for the following month, it was held that the evidence was sufficient to be submitted to the jury on the question of defendant's waiver of the provisions of its certificate and by-laws, requiring certificate of good health before reinstating a policy upon payment of premium after the due date, and upon the verdict of the jury plaintiff was entitled to judgment for the amount of the policy, less the dues for the month not paid. *Shackelford v. Sovereign Camp, W. O. W.*, 209 N. C. 633, 184 S. E. 691.

§ 6503. Waiver of the provisions of the laws.

See *Shackelford v. Sovereign Camp, W. O. W.*, 209 N. C. 633, 184 S. E. 691, where a distinction is made between waiver by local agents, prohibited by this section, and a custom of dealing established over a period of years to the knowledge of the home office.—Ed. note.

§ 6508. Beneficiaries.—

Provided, however, that any member or insured named in any contract or certificate of insurance issued by any beneficial fraternal order, lodge, society, or other insurance association, who has neither lawful spouse nor offspring, shall have the right, without regard to the amount payable thereunder, to have the death benefit provided for in any such contract or certificate of insurance made payable, or to have the named beneficiary changed, to the estate of such member or insured, or to his or her executors or administrators, and to make a testamentary disposition of the proceeds thereof, or to have such death benefit made payable, or to have the named beneficiary changed, to a trustee to be named by such member or insured, and to impress the proceeds in the hands of such trustee with a trust, the terms and provisions of the charter, rules, by-laws and regulations of any such beneficial fraternal order, lodge, society, or other insurance association, to the contrary notwithstanding: Provided further, that in case a husband or wife is designated as beneficiary and subsequently comes absolutely divorced from the member or insured, such divorce shall automatically annul the designation. (1913, c. 89, s. 5; 1931, c. 161; 1937, c. 178.)

Editor's Note.—The 1937 amendment directed that the above provisos be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

This section has heretofore confined the beneficiaries of fraternal insurance policies, with minor exceptions, to relatives and dependents of the insured. As amended, this section now permits the insured to name in addition, as beneficiaries, his estate, or a trustee, anything in the constitution or by-laws of the association to the contrary notwithstanding. A third provision adds that after absolute divorce a wife named as beneficiary loses her rights as such. The effect of the first and third of these provisions is clear. In permitting the insured to designate his estate as beneficiary, the amendment brings fraternal insurance more closely in line with old line insurance. It perhaps renders the proceeds of such a policy available to creditors of a deceased insured and permits wider use of fraternal insurance for investment purposes. In rare instances it will allow a member of an order, who has no near relatives or dependents, to take out such insurance where he heretofore has been prevented from so doing. In destroying the rights of a divorced wife as beneficiary, this section does for an insured what he might unintentionally have neglected to do. The provision permitting the naming of a trustee as beneficiary seems designed to counteract the effects of the recent case of *Equitable Trust Co. v. Widows' Fund of Oasis and Omar Temples*, 207 N. C. 534, 177 S. E. 799, holding invalid an attempt to name as beneficiary a corporate trustee. As amended, however, the section is ambiguous. It does not make clear whether the trustee may be a corporation, or whether he must be a natural person. And it leaves unclear whether the beneficiaries of the trust must be relatives or dependents of the insured. If not, the amendment gives the insured carte blanche, by the device of a trust, to name any beneficiary he desires.

Such is not in keeping with the usual purpose of fraternal benefit insurance. 15 N. C. Law Rev., No. 4, pp. 357-358.

Payment of Dues Alone Is Not Sufficient to Create Lien against Certificate or Vest Interest in It.—Where insured's wife was named beneficiary, and after her death insured's brother, who became the beneficiary under the terms of the certificate as insured's nearest blood relation, kept the certificate in force until the death of the insured a short time thereafter, it was held that under the terms of the certificate the insured's brother was entitled to the proceeds thereof, to the exclusion of the wife's nephew who claimed under the will of the wife, the payment of dues or premiums alone being insufficient to create a lien against the certificate, or the proceeds thereof, and the wife at no time having any vested interest as the named beneficiary which she could bequeath by will. Sorrell v. Sovereign Camp, W. O. W., 209 N. C. 226, 183 S. E. 400.

Art. 27. Whole Family Protection

§ 6530. Insurance on children.—

Provided, any fraternal benefit society which shall accumulate and maintain the reserves required by a table of mortality not lower than the American Experience Table of Mortality, with an interest assumption of not more than four per cent, may accept members at such ages, and children under sixteen years of age, in such manner and upon such showing of eligibility, and issue to its members, and children under sixteen years of age, such forms of certificates, payable to such beneficiaries, and for such amounts, as its constitution and laws may provide. Children under sixteen years of age shall have no voice or vote. (1917, c. 239, s. 1; 1931, c. 38; 1937, c. 208.)

Editor's Note.—The 1937 amendment directed that the above proviso be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

CHAPTER 108

LABOR REGULATIONS

Art. 1. Various Regulations

§ 6558. Railroad employees to be paid twice a month.

This section seems to be the only North Carolina enactment of its kind. 115 N. C. Law Rev., No. 3, p. 266.

§ 6558(a). Acceptance by employer of assignment of wages; counties excepted.—No employer of labor shall be responsible for any assignment of wages to be earned in the future, executed by an employee, unless and until such assignment of wages is accepted by the employer in a written agreement to pay same. (1935, c. 410; 1937, c. 90.)

Editor's Note.—The 1937 amendment struck out the former proviso exempting Rowan, Iredell, Rockingham and Cabarrus counties from the provisions of this section.

Art. 2A. Maximum Working Hours

§ 6564(1). Title of article.—This article shall be known and may be cited as the "Maximum Hour Law." (1937, c. 409, s. 1.)

§ 6564(2). Declaration of public policy; enactment under police power.—As a guide to interpretation and application of this article, the public policy of this state is declared as follows: The relationship of hours of labor to the health, morals and general welfare of the people is a subject of general concern which requires appropriate legislation to limit hours of labor to promote the general welfare of the people of the state without jeopardizing the competitive position of North Carolina business and industry.

The general assembly, therefore, declares that in its considered judgment the general welfare of the state requires enactment of this law under the police power of the state. (1937, c. 409, s. 2.)

§ 6564(3). Limitations of hours of employment; exceptions.—No employer shall employ a female person for more than forty-eight hours in any one week or nine hours in any one day, or on more than six days in any period of seven consecutive days.

No employer shall employ a male person for more than fifty-five hours in any one week, or more than twelve days in any period of fourteen consecutive days or more than ten hours in any one day, except that in case where two or more shifts of eight hours each or less per day are employed, any shift employee may be employed not to exceed double his regular shift hours in any one day whenever a fellow employee in like work is prevented from working because of illness or other cause: Provided, in case of emergencies, repair crews, engineers, electricians, firemen, watchmen, office and supervisory employees and employees engaged in hereinafter defined continuous process operations and in work, the nature of which prevents second shift operations, may be employed for not more than sixty hours in any one week: Provided, also, that the ten hours per day maximum shall not apply to any employee when his employment is required for a longer period on account of an emergency due to breakdown, installation or alteration of equipment: Provided, that boys over fourteen years of age delivering newspapers on fixed routes and working not more than twenty-four hours per week, and watchmen may be employed seven days per week: Provided further, that from the eighteenth of December to and including the following twenty-fourth of December and for two periods of one week's duration each during the year for purpose of taking inventory, female persons over sixteen years of age in mercantile establishments may be employed not to exceed ten hours in any one day: Provided further, that female persons engaged in the operation of seasonal industries in the process of conditioning and preserving perishables or semi-perishable commodities may be employed for not more than ten hours in any one day and not more than fifty-five hours in any one week. Telegraph operators and clerks at offices employed three or less persons may be employed seven days per week.

No provision in this article shall be deemed to authorize the employment of any minor in violation of the provisions of any law expressly regulating the hours of labor of minors or of any regulations made in pursuance of such laws.

Where the day is divided into two or more work periods for the same employee, the employer shall provide that all such periods shall be within twelve consecutive hours, except employees of motion picture theatres, restaurants, dining-rooms, and public eating places, such periods shall be within fourteen consecutive hours:

Provided, that the transportation of employees to and from work shall not constitute any part of the employees' work hours.

Nothing in this section or any other provisions of this article shall apply to the employment of persons in agricultural occupations, ice plants,

cotton gins and cottonseed oil mills or in domestic service in private homes and boarding houses, or to the work of persons over eighteen years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, motion picture theatres, seasonal hotels and club houses, commercial fishing or tobacco redrying plants, tobacco warehouses, employers employing a total of not more than eight persons in each place of business, charitable institutions and hospitals: Provided further, that nothing in this section or in any other provision of this article shall apply to railroads, common carriers and public utilities subject to the jurisdiction of the interstate commerce commission or the North Carolina utilities commission, and utilities operated by municipalities or any transportation agencies now regulated by the federal government: Provided, nothing in this article shall apply to the state or to municipal corporations or their employees, or to employees in hotels.

When, by reason of a seasonal rush of business, any employer finds or believes it to be necessary that the employees of his or its manufacturing plant shall work for more than fifty-five hours per week, the employer may apply to the commissioner of labor of the state of North Carolina for permission to allow the employees of such establishment to work a greater number of hours than fifty-five for a definite length of time not exceeding sixty days; and the commissioner, after investigation, may, in his discretion, issue such permit on the condition that all such employees shall receive one and one-half times the usual compensation for all hours worked over fifty-five per week: Provided, this shall not apply to the hours of any female person or any person under the age of eighteen years: Provided further, employees in all laundries and dry cleaning establishments shall not be employed more than fifty-five hours in any one week: Provided further, nothing contained in this article shall be construed to limit the hours of employment of any outside salesmen on commission basis. Provided, that this article shall not apply to male clerks in mercantile establishments. (1937, cc. 406, 409, s. 3.)

§ 6564(4). Definitions.—Whenever used in this article

(a) "Employ" includes permit or suffer to work.

(b) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative or foremen, or other person having control or custody of any employment, place of employment or of any employee.

(c) "Day" includes any period of twenty-four consecutive hours.

(d) "Continuous process operations" includes bleaching, dyeing, finishing, redrying, dry kiln operations, and any other processing requiring continuous handling or work for completion. (1937, c. 409, s. 4.)

§ 6564(5). Posting of law.—Every employer shall post and keep conspicuously posted in or about the premises wherein any employee is employed, a printed abstract of this article to be furnished by the state commissioner of labor upon request. (1937, c. 409, s. 5.)

§ 6564(6). Time records kept by employers.—Every employer shall keep a time book and/or record which shall state the name and occupation of each employee employed and which shall indicate the number of hours worked by him or her on each day of the week, and the amount of wages paid each pay period to each such employee. Such time book and/or record shall be kept on file at least one year after the entry of the record. The state commissioner of labor or his duly authorized representative shall, for the purpose of examination, have access to and the right to copy from such time book and/or record for the purpose of prosecuting violations of the provisions of the article. Any employer who fails to keep such time book and/or record, or knowingly and intentionally makes any false statement therein, or refuses to make such time book and/or record accessible, upon request, to the state commissioner of labor or his duly authorized representative shall be deemed to have violated this section. (1937, c. 409, s. 6.)

§ 6564(7). Enforcement by commissioner of labor.—It shall be the duty of the state commissioner of labor to enforce all the provisions of this article. The state commissioner of labor and his authorized representatives shall have the power and authority to enter any place of employment, and, in the enforcement of this article, the state commissioner of labor and his authorized representatives may enter and inspect as often as practicable all such places of employment. They may investigate all complaints of violations of this article received by them, and may institute prosecutions as hereinafter provided for violations of this article. (1937, c. 409, s. 7.)

§ 6564(8). Interference with enforcement prohibited.—No person shall hinder or delay the state commissioner of labor or any of his authorized representatives in the performance of his duties; nor shall any person refuse to (admit), or lock out from, any place of employment the state commissioner of labor or any of his authorized representatives, or refuse to give the state commissioner of labor or his authorized representatives information required for the proper enforcement of this article. (1937, c. 409, s. 8.)

§ 6564(9). Violation a misdemeanor.—Any person who, whether on his own behalf or for another, or through an agent, manager, representative, foreman or other person, shall knowingly and intentionally violate any provisions of this article, shall be guilty of a misdemeanor. (1937, c. 409, s. 9.)

§ 6564(10). Penalties.—Whoever knowingly and intentionally violates any provisions of section 6564(3), upon complaint lodged by the state commissioner of labor, shall be punished by a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or by imprisonment for not more than thirty days at the discretion of the court; and whenever any person shall have been notified by the state commissioner of labor or his authorized representative, or by the service of a summons in a prosecution, that he is violating such provision, he shall be subject to like penalties in addition for each and every day that such violation shall have been continued after such notification.

Whoever knowingly and intentionally violates any of the provisions of sections 6564(5), 6564(6), 6564(8), or 6564(9) of this article shall be punished, for the first offense, by a fine of not less than five (\$5.00) dollars nor more than twenty-five (\$25.00) dollars, or imprisonment for not more than thirty days, at the discretion of the court, and whenever any person shall have been notified by the state commissioner of labor or his authorized representative that he is violating such provisions, and shall have been given a reasonable time in which to remedy the conditions which shall constitute such violations, he shall be subject to like penalties in addition to the penalties aforesaid, for each and every day that such violation shall have continued after the expiration of the time allowed by the state commissioner of labor or his authorized representative for remedying the aforesaid conditions. (1937, c. 409, s. 10.)

§ 6564(11). **Intimidating witnesses.**—Whoever shall, by force, intimidation, threat of procuring dismissal from employment, or by any other manner whatsoever, induce or attempt to induce an employee to refrain from giving testimony in any investigation or proceeding relating to or arising under this article, or whoever discharges or penalizes any employee for so testifying, shall be subject to a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or by imprisonment for not more than thirty days. (1937, c. 409, s. 11.)

CHAPTER 109

LIBRARIES

Art. 4. Library Commission

§ 6604(a). **Commission authorized to accept and administer funds from federal government and other agencies.**—The North Carolina library commission is hereby authorized and empowered to receive, accept and administer any money or moneys appropriated or granted to it, separate and apart from the general library commission fund, for providing and equalizing public library service in North Carolina:

- (1) By federal government, and
- (2) By any other agencies, private and/or otherwise.

The fund herein provided for shall be administered by the governing board of the library commission of North Carolina, under authority of sections six thousand five hundred ninety-seven, six thousand six hundred four, Consolidated Statutes of North Carolina, which body shall frame by-laws, rules and regulations for the allocation and administration of this fund.

This fund shall be used to increase, improve, stimulate and equalize library service to the people of the whole state, and shall be used for no other purpose whatsoever except as hereinafter provided, and shall be allocated among the counties of the state, taking into consideration local needs, area and population to be served, local interest as evidenced by local appropriations, and such other factors as may affect the state program of library service.

Any gift or grant from the federal government or other sources shall become a part of said fund, to be used as part of the state fund, or may be in-

vested in such securities in which the state sinking fund may be invested as in the discretion of the governing board of the library commission of North Carolina may be deemed advisable, the income to be used for the promotion of libraries as aforesaid. (1937, c. 206.)

CHAPTER 110

MEDICINE AND ALLIED OCCUPATIONS

Art. 2. Dentistry

§ 6649(17). **Licensing former dentists who have moved back into state or resumed practice.**

This section is constitutional and valid as an exercise of the police power of the state for the good and welfare of the people. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809.

And its provisions bear alike upon all classes of persons referred to. Hence the requirement made by the board that the plaintiff make to it a satisfactory showing of his proficiency in the profession of dentistry is no discrimination against the plaintiff. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809.

Mandamus will not lie to control the decision of the board in the exercise of its discretionary power under this section, the extent of mandamus in such cases being limited to compel the exercise of the discretionary power, but not to control the decision reached in its exercise. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809.

Licensed Dentist Removing from State Must Take Second Examination upon Return.—A dentist licensed by the State Board of Dental Examiners, who thereafter moves from this state and practices his profession successively in other states, upon examination and license by them, and then returns to this state, must obtain a license to resume practice here by passing a second examination by the State Board of Dental Examiners, although such dentist has continuously practiced dentistry since he was first licensed by the State Board. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809.

Art. 3. Pharmacy

Part 1. Practice of Pharmacy

§ 6658. **Application and examination for license, prerequisites.**—

Provided, that any person legally registered or licensed as a pharmacist by another state board of pharmacy, and who has had fifteen years continuous experience in North Carolina under the instruction of a licensed pharmacist next preceding his application shall be permitted to stand the examination to practice pharmacy in North Carolina upon application filed with said board. Any person who has had two years of college training and has been filling prescriptions in a drug store or stores for twenty years or longer may take the examination as provided in the above proviso. (Rev., ss. 4479, 4480; 1905, c. 108, s. 13; 1915, c. 165; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94.)

Editor's Note.—The 1937 amendment abolished the time restriction formerly appearing in the last proviso of this section. The prior part of the section, not being affected by the amendment, is not set out here.

§ 6659(b). **Certain assistant pharmacists may take registered pharmacist's examination; no original assistants' certificates issued after January 1, 1939.**—Every person who is the holder of a certificate as a registered assistant pharmacist, issued prior to January first, one thousand nine hundred and thirty-nine, shall be admitted to the registered pharmacist examination. After January first, one thousand nine hundred and thirty-nine, the board shall not issue an original certificate to any person as a registered assistant pharmacist: Provided, however, that nothing in this section

shall prevent any person who was registered as an assistant pharmacist prior to January first, one thousand nine hundred and thirty-nine, from continuing to practice as a registered assistant pharmacist. (1937, c. 402.)

§ 6670(b). Substitution of drugs, etc., prohibited.—Any person or corporation engaged in the business of selling drugs, medicines, chemicals, or preparations for medical use or of compounding or dispensing physicians' prescriptions, who shall, in person or by his or its agents or employees, or as agent or employee of some other person, knowingly sell or deliver to any person a drug, medicine, chemical preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopœia and National Formulary, or prepared according to the private formula of some individual or firm, other or different from the drug, medicine, chemical or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopœia and National Formulary, or prepared according to the private formula of some individual or firm, ordered or called for by such person, or called for in a physician's prescription, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, at the discretion of the court: Provided, that this section shall apply to registered drug stores and their employees only. (1937, c. 59.)

Art. 3A. Narcotic Drug Act

Part 2. Dealing in Specific Drugs Regulated

§ 6686(1). Definitions.

For an analysis of this article, see 13 N. C. Law Rev., No. 4, p. 403.

Applied in *State v. Williams*, 210 N. C. 159, 185 S. E. 661.

§ 6686(2). Manufacture, sale, etc., of narcotic drugs regulated.

Where the defendant was indicted under this section, the indictment following the words of the section and charging defendant in one count with the commission of the several acts forbidden, the several offenses being charged by the use of the disjunctive "or," it was held that it was impossible to ascertain from the indictment which of the several separate offenses defendant was charged with committing, the indictment failing to charge the commission of each of them, since the disjunctive "or" is used, and defendant's motion to quash the indictment for uncertainty should have been allowed. *State v. Williams*, 210 N. C. 159, 185 S. E. 661.

Art. 4. Optometry

§ 6696. Annual fees; failure to pay; revocation of license; collection by suit.—For the use of the board in performing its duties under this article, every registered optometrist shall, in every year after the year one thousand nine hundred and thirty-seven pay to the board of examiners the sum of not exceeding fifteen (\$15.00) dollars, the amount to be fixed by the board, as a license fee for the year.

(1937, c. 362, s. 1.)

Editor's Note.—The 1937 amendment changed the date from 1932 to 1937 and increased the annual license fee from five to fifteen dollars. As only the first sentence was affected by the amendment the rest of the section is not set out here.

§ 6697(a). Practicing under other than own name or as a salaried or commissioned employee.—It shall be unlawful for any person licensed to practice optometry under the provisions of this

article to advertise, practice, or attempt to practice under a name other than his own, except as an associate of or assistant to an optometrist licensed under the laws of the state of North Carolina; and it shall be likewise unlawful for any corporation, lay body, organization, group, or lay individual to engage, or undertake to engage, in the practice of optometry through means of engaging the services, upon a salary or commission basis, of one licensed to practice optometry or medicine in any of its branches in this state. Likewise, it shall be unlawful for any optometrist licensed under the provisions of this article to undertake to engage in the practice of optometry as a salaried or commissioned employee of any corporation, lay body, organization group, or lay individual. (1935, c. 63; 1937, c. 362, s. 2.)

Editor's Note.—The 1937 amendment inserted the words "or medicine in any of its branches" near the end of the first sentence.

Where Suit to Enjoin Enforcement of Section Not Allowed by Federal Court.—Defendants had been enjoined by a state court for an alleged violation of this section. In a suit brought in the district court to enjoin the enforcement of this section, as violating the commerce clause and due process and equal protection clauses of the constitution, it was held that this was a suit to enjoin the decree of a state court and was prohibited by a federal statute. *Ritholz v. North Carolina State Board of Examiners*, 18 F. Supp. 409.

§ 6699. Application of article.—Nothing in this article shall be construed to apply to physicians and surgeons authorized to practice under the laws of North Carolina, except the provisions contained in section 6697(a), or prohibit persons to sell spectacles, eyeglasses, or lenses as merchandise from permanently located or established places of business. (1909, c. 444, s. 15; 1937, c. 362, s. 3.)

Editor's Note.—The 1937 amendment inserted the reference to § 6697(a).

Art. 5. Osteopathy

§ 6701. Board of examiners; membership; officers; meetings.—

The board shall keep a record of its proceedings, and a register of all applicants for certificates, giving the name and location of the institution granting the applicant the degree of doctor of or diploma in osteopathy; the date of his or her diploma, and also whether the applicant was rejected or a certificate granted. The record and registers shall be prima facie evidence of all matters recorded therein. (1907, c. 764, s. 1; 1913, c. 92, s. 1; 1937, c. 301, s. 1.)

Editor's Note.—The 1937 amendment struck out the words "or other nondrug-giving school of medical practice" formerly appearing after the word "osteopathy" in the next to the last sentence. The prior part of the section, not being affected by the amendment, is not set out here.

§ 6704: Repealed by Public Laws 1937, c. 301, s. 2.

§ 6708: Repealed by Public Laws 1937, c. 301, s. 3, codified as §§ 6708(a)-6708(b).

§ 6708(a). Revocation or suspension of license.—The North Carolina state board of osteopathic examination and registration may refuse to issue a license to any one otherwise qualified, and may suspend or revoke any license issued by it to any osteopathic physician who is not of good moral character, and/or for any one or any combination of the following causes:

1. Conviction of a felony, as shown by a cer-

tified copy of the record of the court of conviction;

2. The obtaining of or an attempt to obtain a license, or practice in the profession, or money, or any other thing of value, by fraudulent misrepresentations;

3. Gross malpractice;

4. Advertising by means of knowingly false or deceptive statements;

5. Advertising, practicing, or attempting to practice under a name other than one's own;

6. Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.

Each of the following acts constitutes a misdemeanor, punishable upon conviction by a fine of not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars; or imprisonment for not less than thirty days nor more than one year, or both in the discretion of the court:

1. The practice of osteopathy or an attempt to practice osteopathy, or professing to do so without a license;

2. The obtaining of or an attempt to obtain a license, or practice in the profession, or money, or any other thing of value by fraudulent misrepresentation;

3. The making of any wilfully false oath or affirmation whenever an oath or affirmation is required by this article;

4. Advertising, practicing or attempting to practice osteopathy under a name other than one's own.

The state board may neither suspend nor revoke any license, however, for any of the causes hereinabove set forth unless the person accused has been given at least twenty days notice in writing of the charge against him and a public hearing had by said board, or a quorum thereof.

At the time and place named in said notice the said board, or a quorum thereof, shall proceed to hear the charges against the accused upon competent evidence, oral or by deposition, and at said hearing said accused shall have the right to be present in person and/or represented by counsel. After hearing all the evidence, including such evidence as the accused may present, the board shall determine its action and announce the same.

From any action of the board depriving the accused of his license, or certificate of renewal of license, the accused shall have the right of appeal to the superior court of the county wherein the hearing was held, upon filing notice of appeal within ten days of the decision of the board. The record of the hearing before the North Carolina state board of osteopathic examination and registration shall constitute the record upon appeal in the superior court. (1937, c. 301, s. 3.)

§ 6708(b). Restoration of revoked license.—Whenever any osteopath has been deprived of his license, the North Carolina state board of osteopathic examination and registration, in its discretion, may restore said license upon due notice being given and hearing had, and satisfactory evidence produced of proper reformation of the licensee before restoration. (1937, c. 301, s. 3.)

Art. 6. Chiropractic

§ 6715. Definitions of chiropractic; examinations; educational requirements.—

Provided further, that the said state board of chiropractic examiners may license by reciprocity, upon application, any chiropractor holding a license issued to him by a regular board of chiropractic examiners in another state when said board is satisfied that such applicant has educational qualifications, or the equivalent thereof, equal to those prescribed by said board for admission to practice chiropractic in this state, and upon proof of good moral character and that he has practiced chiropractic under such license for at least one year. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; 1933, c. 442, s. 1; 1937, c. 293.)

Editor's Note.—The 1937 amendment struck out the last sentence in this section and inserted the above provision in lieu thereof. As the rest of the section was not affected by the amendment it is not set out here.

§ 6726. Annual fee for renewal of license.—All persons practicing chiropractic in this state shall, on or before the first Tuesday after the first Monday in January in each year after licenses issued to them as herein provided, pay to the secretary of the board of chiropractic examiners a renewal license fee of ten (\$10.00) dollars, the payment of which, and a receipt from the secretary of the board, shall work a renewal of the license fee for twelve months.

Any license or certificate granted by the board under this article shall automatically be cancelled if the holder thereof fails to secure a renewal within three months from the time herein provided; but any license thus cancelled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of fifteen (\$15.00) dollars. (1917, c. 73, s. 15; 1933, c. 442, s. 4; 1937, c. 293, s. 2.)

Editor's Note.—Prior to the 1937 amendment the fee specified in the first paragraph was two dollars and the fee in the second paragraph was ten dollars.

Art. 13. Cadavers for Medical Schools

§ 6786. What bodies to be furnished; disposition of bodies of prisoners dying while in Central Prison or road camps in Wake county.—

Provided further, that the bodies of all such white prisoners dying while in Central Prison or road camps of Wake county, whether death results from natural causes or otherwise, shall be equally distributed among the white funeral homes in Raleigh, and the bodies of all such negro prisoners dying under similar conditions shall be equally distributed among the negro funeral homes in Raleigh; but only such funeral homes can qualify hereunder as at all times maintain a regular licensed embalmer; and provided further, that nothing herein shall require the delivery of bodies of such prisoners to funeral directors of Wake county where the same are claimed by relatives or friends. (Rev., s. 4288; 1903, c. 666, s. 2; 1911, c. 188; 1923, c. 110; 1937, c. 351.)

Editor's Note.—The 1937 amendment directed that the above provisos be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out here.

CHAPTER 111

MILITIA

Art. 6. Unorganized Militia

§ 6863(a). **Promotion of marksmanship.**—The adjutant general is authorized to detail a commissioned officer of the North Carolina national guard or member of the unorganized militia to promote rifle marksmanship among the unorganized militia of the state. Such officer or member of the unorganized militia so detailed shall serve without pay and it shall be his duty to organize and supervise rifle clubs in schools, colleges, universities, clubs and other groups, under such rules and regulations as the adjutant general shall prescribe and in such manner to make them, when duly organized, acceptable for membership in the national Rifle Association. Provided, that such duties and efforts shall in no wise interfere or conflict with clubs of schools or in no wise interfere or conflict with clubs of schools or units operating in R. O. T. C. or similar schools under the supervision of army instructors.

The adjutant general may reimburse the officer, or member of the unorganized militia, so detailed to promote rifle marksmanship, as aforesaid, for such expenses actually incurred, not to exceed the sum of two hundred dollars (\$200.00) for each year of the biennium, and for this purpose there is hereby appropriated from the general fund the sum of two hundred dollars (\$200.00) annually, to be paid by warrants drawn on the treasurer of North Carolina by the adjutant general. (1937, c. 449.)

Art. 8. Privilege of Organized Militia

§ 6869. **Leaves of absence for state officers and employees.**—All officers and employees of the state who shall be members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, or the naval reserves shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this chapter or as may be directed by the president of the United States. (1917, c. 200, s. 88; 1937, c. 224, s. 1.)

Editor's Note.—The 1937 amendment made this section applicable to the officers reserve corps, the enlisted reserve corps and the naval reserves.

§ 6870. **Exemption from road and jury duty.**—All members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, who comply with and perform all duties required of them as members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, are hereby exempted from duty upon the public roads of the counties in which they reside, and shall also be exempt from service as jurors. On the first day of January and July of each year, beginning with the first day of July, one thousand nine hundred and seventeen, the commanding officer of each company, troop, battery, detachment, or division of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, of North Carolina,

residing in the above mentioned counties, shall file with the clerk of the superior court of the county in which such company, troop, battery, detachment, or division is located a statement giving the name and rank of each member of his organization who has performed all military duties during the preceding six months; and any member of such military organization whose name does not appear upon such statement shall not receive the benefit of the exemption provided for herein during the six months immediately following the filing of the statement. (1913, c. 103; 1915, c. 217; 1917, c. 200, s. 89; 1937, c. 224, s. 2.)

Editor's Note.—The 1937 amendment made this section applicable to the officers reserve corps, the enlisted reserve corps and the naval reserves.

CHAPTER 112

MINES

Art. 3. Waterways Obtained

§ 6926. **Disposition of waste.**—In getting out and washing the products of kaolin and mica mines, the persons engaged in such business shall have the right to allow the waste, water, and sediment to run off into the natural courses and streams. (1917, c. 123; 1937, c. 378.)

Editor's Note.—The 1937 amendment, which made this section applicable to mica mines, provides: "This act shall not affect pending litigation."

Art. 4. Adjustment of Conflicting Claims

§ 6927. Liability for damage for trespass.

Cited in *Carolina Mineral Co. v. Young*, 211 N. C. 387, 190 S. E. 520.

CHAPTER 115A

PHOTOGRAPHERS

§ 7007(1). Definitions.

To solicit persons to have their photographs taken, arrange for the sitting, and actually have the camera present and take what is popularly called a picture, but in fact is a "negative," which is the outline of the subject on glass, is engaging within the state in the profession or business of photography within the meaning of this section. *Lucas v. Charlotte*, 14 F. Supp. 163, 167.

§ 7007(19). Annual license fees for business establishments and employees.

It was contended that the taxes under this section and § 7880(38) were a burden upon and an interference with interstate commerce and therefore void. The court held that the fact that the negatives of photographs, after the taking, were sent to another state to be finished, does not make the transaction one of interstate commerce. *Lucas v. Charlotte*, 86 F. (2d) 394, 396.

CHAPTER 117

PUBLIC BUILDINGS AND GROUNDS

Art. 1. Officers in Charge

§ 7025. **Board of public buildings; keeper of capitol.**—The governor and secretary of state, the treasurer and attorney-general and the assistant director of the budget shall constitute the board of public buildings and grounds, and they shall appoint a keeper of the capitol, public grounds and arsenal, and he shall hold his office until his successor is appointed and files his bond in ac-

cordance with the requirements of the board and the law relating to bonds.

(1937, c. 304, s. 1.)

Editor's Note.—The 1937 amendment inserted the words "and the assistant director of the budget" in the first sentence. The rest of the section, not being affected by the amendment, is not set out here.

Art. 2. Public Buildings

§ 7039(b). Use of other buildings.—Except as herein otherwise provided all space in other state buildings in Raleigh, now existing or hereafter erected, including the capitol, the administration and state departments building, the agricultural building and the automobile building, as well as the buildings on the lot formerly occupied by the school for the blind lying on Jones street in Raleigh, shall be used for such purposes and in such manner as may be directed or prescribed by the board of public buildings and grounds, and they shall have full power and authority to make such removals, readjustments and to provide such equipment as may be necessary to carry out the purposes of this act, and to that end may use the appropriations thereof made to the board of public buildings and grounds, the agricultural department shall be permanently located in the agricultural building. (1927, c. 153, s. 3; 1937, c. 304, s. 2.)

Editor's Note.—The 1937 amendment inserts the words "now existing or hereafter erected" in the third and fourth lines of this section.

§ 7039(b1). Board given supervision of location, plan and construction.—The location, plan and construction of any state building hereafter erected in Raleigh shall be under the direct control and supervision of the board of public buildings and grounds, unless it shall be otherwise provided in the act authorizing its erection. (1937, c. 304, s. 3.)

CHAPTER 118

PUBLIC HEALTH

SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW

Art. 5A. Local and District Health Departments

§ 7085(4). County excepted from article.—This article shall not apply to the county of Rockingham. (1935, c. 142, s. 4; 1937, c. 17.)

Editor's Note.—Prior to the 1937 amendment this section applied to Martin county.

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC

Art. 15. Venereal Diseases

Part 1. Control and Treatment

§ 7194(a). Treatment of prisoners infected with communicable venereal disease required before release.—Whenever any person shall be confined or imprisoned in any state, county, or city prison in this state and, upon examination provided in Consolidated Statutes, seven thousand one hundred and ninety-four, such person has been found to be infected by a communicable venereal disease by the county health officer or other licensed physician

authorized by law to make the said examination, the said person shall not be set at liberty until treated for the said disease in accordance with the provisions of the said section, unless such person shall give a bond with surety satisfactory to the clerk of the superior court of the county where he is imprisoned, conditioned upon his making his personal appearance at a stated time and place before the county health officer, and to submit to such examinations as may be proper in the case, and to satisfy said officer that he is undergoing, or has undergone, satisfactory treatment for his said disease.

Upon the giving of the said bond, such person shall, from time to time, as required by the county health officer, personally appear before him for examination, and when, in the judgment of the said health officer, the disease is no longer communicable, he shall be permitted to go without further appearance, and his bond shall be discharged.

The order discharging the said person from further attendance and examination shall be made by the clerk of superior court, upon certificate of the aforesaid health officer or other physician authorized to make the examination. (1937, c. 230.)

Art. 16A. Health of Domestic Servants

§ 7220(g). Domestic servants required to furnish health certificate.—Hereafter all domestic servants who shall present themselves for employment shall furnish their employer with a certificate from a practicing physician or the public health officer of the county in which they reside, certifying that they have been examined within two weeks prior to the time of said presentation of said certificate, that they are free from all contagious, infectious or communicable diseases and showing the non-existence of any venereal disease which might be transmitted. Such certificate shall be accompanied by the original report from a laboratory approved by the state board of health for making such tests, showing that the Wasserman or any other approved tests of this nature are negative. Such tests to have been made within two weeks of the time of the presentation of such certificates; and such certificate shall also affirmatively state the non-existence of tuberculosis in the infectious state. (1937, c. 337, s. 1.)

§ 7220(h). Annual examinations.—All domestic servants employed shall be examined at least once each year and as often as the employer may require, and upon examination shall furnish to the employer all of the evidence of the condition of their health, as is set out in section 7220(g). (1937, c. 337, s. 2.)

Art. 21. Public Bakeries

§ 7251(t). Inspection fee.—

Provided, that no inspection fee shall be required of farm women in North Carolina who make cakes and breads and sell the same on the home demonstration curb markets. (1921, c. 173, s. 9; 1937, c. 281.)

Editor's Note.—The 1937 amendment directed that the above provision be added at the end of this section. As the rest of the section was not affected by the amendment, it is not set out in this supplement.

Art. 21A. Milk and Milk Bottles, Crates, Cans and Other Containers of Dairy Products

§ 7251(w)1. Regulation of use of milk containers.

This and Following Two Sections Are Unconstitutional.—Chapter 284, P. L. 1933, which was codified as the first three sections of this article, was held unconstitutional and void as an unwarranted exercise of the police power, since its provisions prohibiting the use of milk bottles by the owner, or person in lawful possession thereof, for purposes other than the distribution of milk bears no relation to the public health, or ordinarily with the susceptibilities of the public, unless such container, after its use for other purposes, is used or intended to be used for the distribution of milk. *State v. Brockwell*, 209 N. C. 209, 183 S. E. 378.

Art. 21B. Meat Markets and Abattoirs

§ 7251(w)6. Sanitation and rating of places selling fresh meats.—For the better protection of the public health, the state board of health is hereby authorized, directed and empowered to prepare and enforce rules and regulations governing the sanitation of meat markets, abattoirs, and other places where meat or meat products are prepared, handled, stored, or sold, and to provide a system of scoring and grading such places. No such meat market or abattoir shall operate which receives a sanitary rating of less than seventy per cent (70%): Provided, that this article shall not apply to farmers and others who raise, butcher and market their own meat or meat products. (1937, c. 244, s. 1.)

§ 7251(w)7. When inspectors required to file reports with local health officer.—Where municipalities or counties have a system of meat inspection as already provided by law the person or persons responsible for such meat inspection work shall file a copy of all inspection work, reports and other official data with the city or the county health officer, as the case may be, and in municipalities and counties having no organized health department, such person or persons shall file a copy of all inspection work, reports and other official data with the state health officer. The state board of health shall provide or approve the report forms referred to in this section. (1937, c. 244, s. 2.)

§ 7251(w)8. Violation a misdemeanor.—Any person, firm, or corporation found guilty of violating any of the provisions of this article, or any of the rules and regulations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), or imprisoned in jail for not less than thirty days at the discretion of the court. (1937, c. 244, s. 3.)

§ 7251(w)9. Repealing clause.—All laws and clauses of laws in conflict with this article are hereby repealed: Provided, that nothing in this article shall in any way repeal or affect sections 4768(a)-4768(h), or the rules and regulations promulgated thereunder. (1937, c. 244, s. 4.)

Art. 22. Manufacture, etc., of Bedding

§§ 7251(hh)13-7251(hh)24: Repealed by Public Laws 1937, c. 298, s. 13, codified as § 7251(hh)36.

§ 7251(hh)25. Definitions; possession prima facie evidence of intent to sell.—As used in this law:

The word "mattress" means: Any mattress, upholstered spring, comforter, pad, cushion, or pillow to be used in sleeping.

The word "person" means: Any individual, corporation, partnership, or association.

The term "new material" means: Any material which has not been used in the manufacture of another article or used for any other purpose: Provided, this shall not exclude by-products of industry that have not been in human use, unless included in the following paragraph.

The term "previously used material" means: (a) Any material which has been used in the manufacture of another article or used for any other purpose: (b) any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated, including juts and shearings.

The word "renovate" means: The reworking of a used mattress and returning it to the owner for his own personal use or the use of his immediate family.

The word "manufacture" means: Any making or re-making of a mattress out of new or previously used material, other than renovating.

The word "sell" or "sold" shall, in the corresponding tense, include: Sell, offer to sell, deliver or consign in sale, or possess with intent to sell, deliver, or consign in sale.

Possession of one or more articles covered by this law when found in any store, warehouse, or place of business, other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the article or articles so possessed are possessed with intent to sell, or sterilize and sell.

All words shall include plural and singular, masculine and feminine, as the case demands. (1937, c. 298, s. 1.)

§ 7251(hh)26. Sterilization; tagging mattresses received for renovation, etc.—No person shall renovate a mattress without first sterilizing it by a process approved by the state health officer.

No person shall manufacture a mattress containing previously used material without first sterilizing such material by a process approved by the state health officer.

No person shall sell or give away in connection with a sale a used mattress or a mattress containing any previously used material unless sterilized, since last used, by a process approved by the state health officer: Provided, this law shall not apply to a mattress sold by the owner from his home direct to the purchaser, unless such mattress has been exposed to an infectious or contagious disease.

Any person desiring to operate a sterilizer shall first secure license from the state health officer, the fee for which shall be twenty-five dollars (\$25.00) for each calendar year or part thereof. Such license shall be kept conspicuously posted in the place of business: Provided, however, that blind persons operating under the direction of the state commission for the blind shall be exempt from said license fee.

Any sterilizing apparatus used under this law shall be inspected and approved by a representative of the state health officer. If, in the opinion of such representative, the apparatus does not

effectively sterilize, or if at any time it is not maintained in a satisfactory condition, it may be condemned by any representative of the state health officer, in which event it shall not be used for sterilizing any mattress or material required to be sterilized under this law until the defects have been remedied and the apparatus approved by a representative of the state health officer.

Any person sterilizing material or mattresses for another person shall keep in a well-bound book a complete record of the kind of material and mattresses so sterilized, such record to be open to inspection by any representative of the state board of health.

Any person who receives a mattress for renovation or storage shall keep attached thereto, from the time received, a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2.)

Editor's Note.—This statute escapes the condemnation which befell the Pennsylvania statute in *Weaver v. Palmer Bros. Co.*, 270 U. S. 402, 46 S. Ct. 320, 70 L. Ed. 654. In fact, the opinion in that case indicates that sterilization is the proper way to regulate the manufacture of bedding and mattresses from second-hand material. 15 N. C. Law Rev., No. 4, p. 328.

§ 7251(hh)27. Manufacture regulated; required information to be stamped on tags; use of "sweeps" or "oily sweeps" material.—No person shall manufacture or sell a mattress to which is not securely sewed a cloth or cloth-backed tag at least two (2) inches by three (3) inches in size, to which is affixed the adhesive stamp provided in section 7251(hh)29. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English (a) the name of the material or materials used to fill such mattress; (b) the name and address of the maker or vendor of the mattress; (c) in letters at least one-eighth inch high the words "made of new material," if such mattress contains no previously used material; or the words "made of previously used materials," if such mattress contains any previously used material; or the words "second-hand" on any mattress which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or second-hand mattresses. Such tag shall be approved by the state health officer.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the stamp required by this law, and shall be sewed to the outside covering of every mattress being manufactured, before the filling material has been inserted.

When the word "cotton" is used, the kind of cotton shall be clearly stated on said tag.

Material known in the cotton waste trade as "sweeps" or "oily sweeps" shall not be used unless washed in accordance with rules to be promulgated by the state board of health: Provided, this provision shall not go into effect until six months after the ratification of this law.

The name "felt" shall not be used unless the material has been carded in layers by a garnett machine and is inserted into the mattress in layers. (1937, c. 298, s. 3.)

§ 7251(hh)28. Altering, etc., tags prohibited.—

No person, other than a purchaser for his own use or a representative of the state board of health, shall remove from a mattress, or deface or alter, the tag required by this law. (1937, c. 298, s. 4.)

§ 7251(hh)29. Enforcement funds.—The state health officer is hereby charged with the administration and enforcement of this law, and he shall provide specially designated adhesive stamps for use under section 7251(hh)27. Upon request he shall furnish no less than five hundred said stamps to any person paying in advance ten dollars (\$10.00) per five hundred stamps. State institutions engaged in the manufacture of mattresses for their own use or that of another state institution shall not be required to use such stamps.

All money collected under this law shall be paid to the state health officer, who shall place all such money in a special "bedding law fund," which is hereby created and specifically appropriated to the state board of health, solely for expenses in furtherance of the enforcement of this law. The state health officer shall semiannually render to the state auditor a true statement of all receipts and disbursements under said fund, and the state auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for (a) salaries and expenses of inspectors and other employees who devote their time to the enforcement of this law, or (b) expenses directly connected with the enforcement of this law, including attorney's fees, which are expressly authorized to be incurred by the state health officer without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the state board of health. (1937, c. 298, s. 5.)

§ 7251(hh)30. Enforcement by state board of health.—The state board of health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this law. Any person who shall hinder or prevent any representative of the state board of health in the performance of his duty hereunder shall be guilty of a violation of this law.

Every place where mattresses are made, remade, renovated or sold, or where material, which is to be used in the manufacture of mattresses, is mixed, worked, or stored, shall be inspected by duly authorized representatives of the state board of health.

Any representative of the state board of health may order off sale, and so tag, any mattress which is not made and tagged as required by this law, or which is tagged with a tag containing a statement false or misleading, and such mattress shall not be sold until such defect is remedied and a representative of the state board of health has re-inspected same and removed the "off sale" tag.

Any person supplying material to a mattress manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The mattress manufacturer shall keep such invoice on file for

one year subject to inspection by any representative of the state board of health.

When an authorized representative of the state board of health has reason to believe that a mattress is not tagged or filled as required by this law, he shall have authority to open a seam of such mattress to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such mattress, and he shall have power to seize and hold for evidence any such records and any mattress or mattress material which in his opinion is made, possessed, or offered for sale contrary to this law, and shall have power to take a sample of any mattress or mattress material for the purpose of examination or for evidence. (1937, c. 298, s. 6.)

§ 7251(hh)31. Licenses.—No person, except for his own personal use or the use of his immediate family, and blind persons operating under the direction of the state commission for the blind, shall manufacture mattresses until he has secured a license therefor from the state board of health upon payment of an annual inspection fee of twenty-five dollars (\$25.00), and in case such mattresses are manufactured from previously used material he shall also secure and pay for the additional license required under section 7251(hh)26. The licenses so issued shall be valid until the end of the calendar year in which issued, or until voided for violation of this law, and shall at all times be kept conspicuously posted in the place of business.

The state health officer may revoke and void the aforesaid license and the sterilizing license issued under section two of any person convicted a second time for violating this law; and such person shall not thereafter make, remake, renovate, or sell a mattress for a period of six months after such revocation, and then only after he has paid the required fees for new licenses. (1937, c. 298, s. 7.)

§ 7251(hh)32. Unit of offense.—Any person who fails to comply with any provision of this law, or who counterfeits the stamp provided in section 7251(hh)29, shall be guilty of a violation of this law. Each stamp so counterfeited and each mattress made, renovated, or sold contrary to this law shall be a separate violation. (1937, c. 298, s. 8.)

§ 7251(hh)33. Issue of warrants.—If any person submits reasonable proof of any violation of this law to any law enforcement officer, or to a representative of the state board of health, it shall be the duty of said officer or representative of the state board of health to swear out a warrant against the offender. (1937, c. 298, s. 9.)

§ 7251(hh)34. Penalty.—A person who violates this law shall, upon conviction thereof, be fined not more than fifty dollars (\$50.00), or imprisoned in the county jail not to exceed thirty days. (1937, c. 298, s. 10.)

§ 7251(hh)35. Blind persons exempt.—In the cases where mattresses are manufactured or renovated in a plant or place of business owned solely

by blind persons in which place of business not more than one sewing assistant is employed in the manufacture or renovation of mattresses, neither the payment of the license fees nor the use of stamps shall be required, and mattresses made by such blind persons may be sold by any dealer without the stamps being affixed. (1937, c. 298, s. 11.)

§ 7251(hh)36. Repeal of law no bar to prosecution of violators.—Chapter one hundred sixty-seven of the Public Laws of one thousand nine hundred thirty-five [§ 7251(hh)13 et seq.] is hereby repealed, such repeal to be effective upon the ratification of this law: Provided, however, that such repeal shall not bar the prosecution of persons who have violated the provisions of chapter one hundred sixty-seven of the Public Laws of one thousand nine hundred thirty-five prior to its repeal, whether such prosecutions are pending or otherwise. (1937, c. 298, s. 13.)

CHAPTER 119

PUBLIC HOSPITALS

Art. 2. Municipal Hospitals

Part 2. County Tuberculosis Hospital

§ 7280. Election for bond issue; special tax.—

The board of commissioners are also authorized to levy a special annual tax not to exceed eight cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for the hospital for tuberculosis.

(1937, c. 197.)

Editor's Note.—The 1937 amendment increased the maximum tax rate authorized in the fourth sentence from five to eight cents. The rest of the section, not being affected by the amendment, is not set out.

CHAPTER 120

PUBLIC PRINTING AND DEPARTMENT OF LABOR

Art. 2. Department of Labor

§ 7310. Election of commissioner; term; salary; vacancy.—The commissioner of labor shall be elected by the people in the same manner as is provided for the election of the secretary of state. His term of office shall be four years, and he shall receive a salary of five thousand, two hundred fifty dollars (\$5,250.00) per annum. Any vacancy in the office shall be filled by the governor, until the next general election. The office of the department of labor shall be kept in the city of Raleigh and shall be provided for as are other public offices of the state. (Rev., ss. 3909, 3910; 1919, c. 314, s. 4; 1931, c. 312, s. 2; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415.)

Editor's Note.—Prior to the 1937 amendment the commissioner's salary was \$4,500 per annum.

Art. 2A. Board of Boiler Rules and Bureau of Boiler Inspection

§ 7312(7). Certain boilers excepted.—This article shall not apply to boilers under federal control or to stationary boilers used by railroads which are inspected regularly by competent in-

spectors, or to boilers used solely for propelling motor road vehicles; or to boilers of steam fire engines brought into the state for temporary use in times of emergency to check conflagrations; or to portable boilers used for agricultural purposes only or for pumping or drilling in the open field for water, gas or coal, gold, talc or other minerals and metals; or to steam heating boilers which carry pressures not exceeding fifteen pounds per square inch, built in accordance with the boiler code of the American Society of Mechanical Engineers. (1935, c. 326, s. 6; 1937, c. 125, s. 1.)

Editor's Note.—Prior to the 1937 amendment this section excepted boilers used for heating purposes.

§ 7312(11). Boiler inspections; fee; certificate; suspension.—On and after April first, nineteen hundred and thirty-five, each steam boiler used or proposed to be used within this state, except boilers exempt under section 7312(7), shall be thoroughly inspected internally and externally while not under pressure by the chief inspector or by one of the deputy inspectors or special inspectors provided for herein, as to its design, construction, installation, condition and operation; and if it shall be found to be suitable, and to conform to the rules and regulations of the board of boiler rules, a certificate of inspection shall be issued to the owner of such boiler inspected without cost or fee, and the chief inspector shall issue to the owner or user thereof an inspection certificate specifying the maximum pressure which it may be allowed to carry.

(1937, c. 125, s. 2.)

Editor's Note.—Prior to the 1937 amendment the first sentence of this section provided for a fee of one dollar for each inspection certificate issued. The rest of the section, not being affected by the amendment, is not set out.

§ 7312(15). Fee for internal and external inspections.—The owner or user of a steam boiler, required by this article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector six (\$6.00) dollars for each fire tube boiler over thirty inches in diameter internally inspected and four (\$4.00) dollars for each fire tube boiler over thirty inches in diameter externally inspected while under pressure, and shall pay to the inspector four (\$4.00) dollars for each fire tube boiler up to and including thirty inches in diameter internally inspected and three (\$3.00) dollars for each fire tube boiler up to and including thirty inches in diameter externally inspected while under pressure. All water tube boilers shall be charged six (\$6.00) dollars for each internal inspection and four (\$4.00) dollars for each external inspection while under pressure: Provided, that not more than ten (\$10.00) dollars shall be collected for any one fire tube boiler over thirty inches in diameter for any one year; that not more than seven (\$7.00) dollars be collected for any one fire tube boiler up to and including thirty inches in diameter for any one year, and that not more than ten (\$10.00) dollars be collected for any water tube boiler for any one year. The inspector shall give receipts for said fees and shall pay all sums so received to the commissioner of labor, who shall pay the same to the treasurer of the state. The treasurer of the state shall hold the fees collected under this section and under section 7312(11) in a special account to pay the

salaries and expenses incident to the administration of this article, the surplus, with the approval of the director of the budget, to be added to the appropriation of the division of standards and inspections of the department of labor for its general inspectional service. (1935, c. 326, s. 13; 1937, c. 125, s. 3.)

Editor's Note.—The 1937 amendment made changes in the inspection fees.

§ 7312(16). Bonds of chief inspector and deputy inspectors.—The chief inspector shall furnish a bond in the sum of five thousand dollars (\$5,000), and each of the deputy inspectors shall furnish a bond in the sum of one thousand dollars (\$1,000), conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively, and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the state treasurer out of the special fund provided for in section 7312(15). (1935, c. 326, s. 14; 1937, c. 125, s. 4.)

Editor's Note.—Prior to the 1937 amendment this section excepted certain counties and ground sawmills.

Art. 3. Free Employment Bureau

§ 7312(a). Creation of bureau; officer in charge; assistants and employees.

As to transfer of state employment service to the unemployment compensation commission, see § 8052(12).

CHAPTER 120B

REAL ESTATE BROKERS AND SALESMEN

§ 7312(cc). Title; license for real estate brokers and salesmen, required.—The chapter shall be known and may be cited as the North Carolina Real Estate License Act of one thousand nine hundred thirty-seven, and on and after June first, one thousand nine hundred and thirty-seven it shall be unlawful for any person, co-partnership, association or corporation to engage in or carry on, or to advertise or hold himself, itself or themselves out as engaging in or carrying on the business, or act or assume to act in the capacity of a real estate broker or real estate salesman within this state without first obtaining a license from the North Carolina real estate commission. (1937, c. 292, s. 1.)

§ 7312(dd). Definitions and exceptions.—(A) A real estate broker within the meaning of this chapter is any person, firm, co-partnership, association or corporation who for a compensation or other valuable consideration, directly or indirectly paid or promised, expressed or implied, or in the expectation or upon the promise of receiving a compensation or valuable consideration, sells, exchanges, purchases, appraises, auctions, rents, leases or negotiates the sale, exchange, purchase, rental or leasing of the real estate of others, or offers, attempts or agrees to appraise, auction, sell, exchange, buy, lease, rent, or to negotiate the sale, exchange, purchase, rental or leasing of the real estate of others, or lists or offers or attempts or agrees to list any real property of others, or interest therein or concerning the same, including mineral and oil rights or leases; or who collects or offers or attempts or agrees to collect rental for the use of real estate of others, or who shall advertise or hold out to the public by any

oral or printed solicitation or representation that such person, firm, co-partnership, association or corporation is engaged in the business of appraising, auctioning, selling, exchanging, buying, leasing or renting real estate of others or any interest therein, including mineral or oil rights or leases of others as a whole or partial vocation.

(B) A real estate salesman within the meaning of this chapter is any person who for a compensation or valuable consideration paid or promised is employed or engaged, either directly or indirectly, as a whole or partial vocation by or on behalf of a licensed real estate broker to do, perform, offer or attempt to perform any act or acts enumerated under the definition of a real estate broker in subsection (A) of this section.

(C) The provisions of this chapter shall not apply to any person, firm, co-partnership, association or corporation who as owner or lessor shall perform any of the acts aforesaid with reference to property owned or leased by it or them or to the regular employees thereof with respect to the property so owned or leased, where such acts are performed in the regular course of, or as incident to the management of such property and the investment therein, nor shall the provisions of this chapter apply to persons acting as attorney in fact under a bona fide duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing or exchange of real estate, nor shall this chapter be construed to include in any way the services rendered by an attorney-at-law in the performance of his duties; nor shall it be held to include while acting as such a receiver, trustee in bankruptcy, administrator or executor, or any person doing any of the acts specified in subsection (A) of this section under order of any court, nor to include a trustee or mortgagee acting under a trust or mortgage agreement, deed of trust, mortgage or will, or the regular salaried employees thereof. (1937, c. 292, s. 2.)

§ 7312(ee). Creation of North Carolina real estate commission; details of same.—(A) There is hereby created the North Carolina real estate commission. The governor shall appoint three persons as members of the commission, each of whom shall have been regularly and continuously engaged in the real estate business in the state of North Carolina, as is defined by this chapter, for a period of at least five years immediately prior to appointment; one member shall be appointed for a term of one year; one member shall be appointed for a term of two years; one member for a term of three years and until their successors are appointed and qualified; thereafter the term of the members of the said commission shall be for three years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed by the governor for the unexpired term. The commission, immediately upon the qualification of the member appointed in each year, shall organize by selecting from its members a chairman, and may do all things necessary and convenient for carrying into effect the provisions of this chapter, and may from time to time promulgate necessary rules and regulations. Two members of the commission shall constitute a quorum for the transaction of business.

The commission shall employ and at its pleasure discharge a secretary and such deputies, assistants, and clerks as shall be deemed necessary to discharge the duties imposed by the provisions of this chapter, and to affect its purposes and shall outline their duties and fix their compensation, subject to the general laws of the state. The commission shall obtain such office space, furniture, stationery, fuel, light and other proper conveniences as shall be reasonably necessary for carrying out the provisions of this chapter.

Each member of the commission shall receive as full compensation for each day actually spent on the work of said commission the sum of ten dollars per day, and his actual and necessary expenses incurred in the performance of duties pertaining to his office.

The commission shall adopt a seal with such design as the commission may prescribe engraved thereon by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection under such rules and regulations as shall be prescribed by the commission.

(B) All fees, charges and penalties collected by the commission under the provisions of this chapter shall be paid into the general fund in the state treasury. All expenses incurred by the commission under the provisions of this chapter, including compensation to members, secretaries, deputies, assistants and clerks, shall be paid out of the general fund in the state treasury upon warrants of the state auditor from time to time when vouchers therefor are exhibited and approved by the commission: Provided, that the total expense for every purpose incurred shall not exceed the total fees, charges and penalties collected by the commission. (1937, c. 292, s. 3.)

§ 7312(ff). Qualifications for license; licenses for partnerships and corporations.—A license shall be granted only to persons who are trustworthy and who bear a good reputation for honesty, truthfulness and fair dealing, and are competent to transact the business of a real estate broker or a real estate salesman in such a manner as to safeguard the interests of the public, and only after satisfactory proof has been presented to the commission.

A co-partnership or corporation shall obtain its license under this chapter only by the qualification of, and issuance of license to, its members and officers who are actively engaged in the real estate business of said co-partnership or corporation, without the payment of additional fee by said co-partnership or corporation. (1937, c. 292, s. 4.)

§ 7312(gg). Application for license.—Every applicant for a real estate license under this chapter shall apply therefor in writing upon blanks prepared or furnished by the real estate commission. Such application shall be accompanied by the recommendation of at least two citizens, real estate owners, not related to the applicant who have known the applicant for a period of two years or more, which recommendation shall certify that

the applicant bears a good reputation for honesty, truthfulness, fair dealing and competency, and recommending that a license be granted to the applicant. (1937, c. 292, s. 5.)

§ 7312(hh). License fees; duplicate licenses; penalty for conducting business without license.—

Every application for a license under the provisions of this chapter shall be accompanied by the license fee herein prescribed. Every original application for a broker's license shall be accompanied by a fee of ten dollars, and every original application for a real estate salesman's license shall be accompanied by a fee of five dollars. Every license shall expire on the thirty-first day of May of each year, and the commission shall issue a new license for each ensuing year, in the absence of any reason or condition which might warrant their refusal of the granting of a license, upon receipt of the written request of the applicant, accompanied by a fee of ten dollars in the case of a broker and five dollars in the case of a salesman. No person, firm or corporation shall engage in the business of a real estate broker or real estate salesman, as defined in this chapter, after the expiration of his or its license on the thirty-first day of May of each year, unless and until such person, firm or corporation shall be issued a new license by the real estate commission upon payment of the annual fee herein prescribed. The fee for all licenses issued under the provisions of this chapter shall be at all periods of the year the same as above prescribed.

If a real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained, or, in the event such broker be a co-partnership, association or corporation, a duplicate shall be issued to the member or officer thereof upon the payment of a single fee of one dollar for each duplicate license issued.

In the event that the commission does not issue a license, the fee shall be returned to the applicant.

In the absence of any reason for refusing a license, a penalty of not more than twenty-five dollars may be imposed and collected by the commission in cases of both brokers and salesmen beginning operations without first making application for a license or for continuing in business after license has expired, without making application for the renewal thereof. (1937, c. 292, s. 6.)

§ 7312(ii). Examinations required of applicants for license; other powers of commission in connection with granting licenses.—(A)

In addition to all other requirements of this chapter as to truthfulness, honesty, a good reputation and competency, every applicant for an original license as a real estate broker and/or salesman shall submit to a written examination to be conducted by the commission or its duly deputized representatives: Provided, however, that any person who has been regularly and actively engaged in the real estate business in this state for a period of one year next preceding the effective date of this chapter, and is thus engaged in this state at the time this chapter goes into effect, may secure a license as a broker or salesman without an examination, provided such person shall submit his application, together with the fees governing the same as is prescribed by this chapter, to the commission

within six months after the effective date of this chapter. For the purposes of this section all applications shall be deemed to be original unless the applicant had either a broker's or salesman's license issued under this chapter in effect on May thirty-first of the preceding year. The commission shall hold examinations at such times and places in the county where the applicant resides as it may determine, said examinations to be held within thirty days after the filing of such application.

(B) The commission may require such other proof as shall be deemed desirable with due regard to the paramount interests of the public as to the honesty, truthfulness, integrity and competency of the applicant. The commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules and regulations connected with the application for licenses hereunder, including information to be required from the applicant concerning his qualifications as shall be deemed necessary to administer and enforce the provisions of this chapter. (1937, c. 292, s. 7.)

§ 7312(jj). Details relating to license; display of license, name, etc.—

It shall be the duty of the commission to issue a license as real estate broker or real estate salesman to all applicants who shall be duly qualified hereunder, and who shall comply with all provisions of law and all the requirements of this chapter. This license shall show the name and address of the licensee, and in case of a real estate salesman's license, shall show the name of the real estate broker by whom he is employed. Each license shall have imprinted thereon the seal of the commission, and in addition to the foregoing, shall contain such matter as shall be prescribed by the commission. It shall be the duty of each real estate broker and salesman to conspicuously display his license in his place of business.

Every licensed real estate broker under the provisions of this chapter shall be required to have and maintain a definite place of business in the state of North Carolina, which shall serve as his office for the transaction of business, and each person, firm, co-partnership or corporation licensed as a broker under the provisions of this chapter shall erect and maintain a sign in a conspicuous location at his place of business to indicate that he or it is a licensed real estate broker, and the name of said person, firm, co-partnership or corporation shall be clearly shown thereon. (1937, c. 292, s. 8.)

§ 7312(kk). Suspension and revocation of license.—(A)

The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, provided such complaint or such complaints, together with evidence, documentary or otherwise, presented in connection therewith, shall make a prima facie case, investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity within this state, and shall have the power to suspend or revoke any license issued under the provisions of this chapter at any time where the licensee has by false or fraudulent representation obtained license or where the licensee, in performing or attempt-

ing to perform any of the acts mentioned herein, is deemed to be guilty of:

- (1) Fraud or fraudulent practices; or
- (2) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts; or
- (3) Failing to account for or to remit any moneys or properties coming into his possession which belongs to others; or
- (4) Paying a commission or valuable consideration for acts or services performed in violation of this chapter; or
- (5) Forgery, embezzlement, obtaining money under false pretense, larceny, conspiracy to defraud, or like offense or offenses; or
- (6) Any dishonest advertising; or
- (7) Violation of any of the provisions of this chapter; or
- (8) Untrustworthiness or incompetency to act as a real estate broker or salesman.

(B) The commission shall, in addition, have power to revoke or suspend any license under the provisions of this chapter at any time where the licensee performs any act or acts, or offers or attempts or agrees to do any act or acts, for which the commission may lawfully refuse to issue a license to any applicant. (1937, c. 292, s. 9.)

§ 7312(11). Provision for hearing.—The commission shall, before denying an application for license or before revoking any license and at least ten days prior to the date set for the hearing, notify in writing the applicant for license, or the licensee, of any charges made and shall afford said applicant or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of the same personally to the applicant or licensee, or by mailing the same by registered mail to the last known business address of such licensee, or in the case of an applicant to the business address indicated on the application for license. If the applicant or licensee be a real estate salesman, the commission shall also notify the broker employing him, by mailing notice by registered mail to the broker's last known address. The hearing on such charges shall be at such time and place as the commission shall prescribe. The commission shall have power to subpoena and bring before it any person in this state and administer oaths to and take testimony of any such persons under oath or to cause his deposition to be taken. Such hearings may be held by the commission or any member thereof, and witnesses giving testimony under a subpoena before the commission or any member thereof or by deposition shall be entitled to the same fees and mileage as is allowed by law in civil actions. In cases heard before the commission or any member thereof, if the commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, his or its license shall be suspended or revoked. If the charges preferred against such applicant or licensee are sustained and license is denied or suspended or revoked, such applicant or licensee shall be taxed with the cost of the hearings: Provided, however, that such bill of costs

shall not include any compensation to the commission or member thereof before whom the hearings are conducted.

Any applicant for license whose application is denied or any licensee whose license is revoked or suspended by the commission shall have the right to appeal to the superior court of the county in which such applicant or licensee resides, which court shall hear the matter on appeal, and may in its discretion sustain, reverse or modify any decision or order made by the commission: Provided, however, that such appeal from the decision of the commission shall be taken by said applicant or licensee within thirty days from the date of said decision or within thirty days after receipt of notice of the decision of the commission to be sent by registered mail, but not thereafter. Pending the appeal the court may make such orders with respect to the matter in controversy as justice may require. (1937, c. 292, s. 10.)

§ 7312(mm). Non-resident brokers and salesman.—(A) A non-resident of this state may become a real estate broker or a real estate salesman by conforming to all of the conditions of this paragraph and this chapter relative to resident brokers and salesmen.

(B) In its discretion the commission may recognize, in lieu of the recommendations and statements required to accompany an application for license, the license issued to a non-resident broker or salesman in such other state upon payment of the license fee and the filing by the applicant with the commission of a certified copy of applicant's license issued by such other state.

(C) A non-resident who applies for a license under the privileges accorded by this section, and to whom a license is issued upon compliance with all the other requirements of law and provisions of this chapter, shall not be required to maintain a definite place of business within this state: Provided, that such applicant, if a broker, shall maintain an active place of business within the state by which he is originally licensed.

(D) Every non-resident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state on the secretary of the commission, said consent stipulating and agreeing that service of such process or pleadings on said secretary shall be taken and held in all courts to be as valid and binding as if service had been made personally upon said applicant in the state of North Carolina. Said instrument containing such consent shall be authenticated by the acknowledged signature and seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board, authorizing the proper officer to execute the same. In case any process or pleading is served upon the secretary of the commission it shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main

office of the licensee against whom or which said process or pleading is directed.

(E) The commission may waive the requirement of a written examination in the case of an application from a non-resident broker or salesman of those states having similar requirements, under the laws of which similar recognition and courtesies are extended to licensed real estate brokers and real estate salesmen of this state. (1937, c. 292, s. 11.)

§ 7312(nn). Publication of list of licensees.—The commission shall at least semi-annually publish a list of the names and addresses of all licensees licensed by it under the provisions of this chapter. One of such lists shall be mailed to the clerk of the superior court in each county of this state and shall be held by said clerk as a public record. The commission shall also mail one copy of such list to each licensed real estate broker or salesman upon his request therefor, without charge. (1937, c. 292, s. 12.)

§ 7312(oo). Penalties.—Any person, firm, or corporation who engages in or carries on the business of a real estate broker or salesman, as defined in this chapter, without having been issued a license as herein required, or any real estate broker or salesman who carries on the business of such real estate broker or salesman after his or its license hereunder has expired or has been revoked or suspended as herein provided, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars.

This law shall not be construed to relieve any person, co-partnership or corporation from civil liability or criminal prosecution under the general laws of this state.

It shall be the duty of the commission to aid in the detection and prosecution of all offenses under this chapter. (1937, c. 292, s. 13.)

§ 7312(pp). License prerequisite to action for recovery of fees, commissions, etc.—No action or suit shall be instituted nor recovery therein be had in any court of this state by any person, co-partnership, association or corporation for compensation, fee or commission for any act done, or service rendered, the doing or rendering of which is prohibited under the provisions of this chapter to others than licensed real estate brokers or salesman, unless such person, co-partnership, association or corporation was duly licensed hereunder as a real estate broker or salesman at the time of the doing of such act or the rendering of such service. (1937, c. 292, s. 14.)

§ 7312(qq). Interpretation and purpose of chapter.—Nothing in this chapter contained shall affect the accrual and payment of privilege taxes on real estate brokers or salesmen prescribed by the Revenue Act, and all licenses due under said act shall be paid direct to the commissioner of revenue or as may be otherwise provided in said act. The requirements hereof shall also be in addition to the requirements of any existing or future ordinance of any city or town so taxing, licensing or regulating real estate brokers and salesmen. It is the purpose of this chapter to provide for the regulation and discipline of real

estate brokers and salesmen doing business within the state of North Carolina to the end that the interests and welfare of the people of said state shall be safeguarded by such regulation, and the fees herein charged shall be used by the commission for the enforcement of the provisions of this chapter, and shall be in addition to any and all other privilege taxes, license fees or levies, whether made by the state of North Carolina or any county, city or town, when the same are made under authority of law. (1937, c. 292, s. 17.)

§ 7312(rr). Counties exempted.—This chapter shall not apply to the counties of Anson, Ashe, Alexander, Bertie, Brunswick, Beaufort, Bladen, Burke, Caldwell, Columbus, Cherokee, Cabarrus, Caswell, Currituck, Camden, Clay, Cumberland, Chowan, Dare, Davidson, Duplin, Davie, Franklin, Gaston, Graham, Hertford, Hyde, Hoke, Halifax, Haywood, Henderson, Jones, Jackson, Johnston, Lee, Lincoln, Moore, Madison, McDowell, Macon, Montgomery, Northampton, Orange, Pender, Perquimans, Person, Polk, Randolph, Robeson, Richmond, Rockingham, Rutherford, Scotland, Sampson, Stanly, Swain, Transylvania, Tyrrell, Union, Vance, Warren, Wilkes, Wayne, and Yadkin. (1937, c. 292, s. 17½.)

CHAPTER 121

REFORMATORIES

Art. 2. State Home and Industrial School for Girls

§ 7329. Incorporation and name.—A corporation to be known and designated as the State Home and Industrial School for Girls is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organizations and existence as hereinafter set forth. (1917, c. 255, s. 1; 1937, c. 147, s. 1.)

Editor's Note.—The 1937 amendment changed the name of the institution by omitting the word "women."

§ 7334. Persons committed to the reformatory; time of detention.—Any girl who may come or be brought before any court of the state, and may either have confessed herself guilty or have been convicted of being a habitual drunkard, or being a prostitute, or of frequenting disorderly houses or houses of prostitution, or of vagrancy, or of any other misdemeanor, may be committed by such court for confinement in the institution aforesaid: (1937, c. 147, s. 2.)

Editor's Note.—The 1937 amendment struck out the words "or woman" formerly appearing as the third and fourth words of this section. Only the part of the section affected by the amendment is set out.

Art. 2A. The Industrial Farm Colony for Women

§ 7343(k). Women subject to committal.—The board of directors may in its discretion receive and detain as an inmate of the institution any woman or girl, not otherwise provided for, who may be sentenced by any court of the United States within this state: Provided, that no woman who has been adjudged epileptic or insane by a competent authority, or is of such low mentality

or is so markedly psychopathic as to prevent her from profiting by the training program of the institution, shall be admitted.

(1937, c. 277.)

Editor's Note.—The 1937 amendment added the proviso to the second sentence. The rest of the section, not being affected by the amendment, is not set out here.

Art. 4. Eastern Carolina Industrial Training School for Boys

§ 7362(c). **Establishment and operation of school; boys subject to committal; control; term of detention.**—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent white boys of the state; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal boys under the age of twenty years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders, or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. All laws and clauses of laws in conflict with the provisions of this section are hereby repealed. (1923, c. 254, s. 3; 1937, c. 116.)

Editor's Note.—Prior to the 1937 amendment the age limit was eighteen years.

Art. 5. Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools

§ 7362(p). **Conditional release.**—The superintendent of the State Home and Industrial School for Girls, of the Stonewall Jackson Manual Training and Industrial School, of the Eastern Carolina Industrial Training School for Boys, and of the Morrison Training School for Negro Boys, shall have power to grant a conditional release to any inmate of the institution over which such superintendent presides, under rules adopted by the board of trustees or managers of such institution, and such conditional release may be terminated at any time by the written revocation of such superintendent, which written revocation shall be sufficient authority for any officer of the school or any peace officer to apprehend any inmate named in such written revocation, in any county of the state, and to return such inmate to the institution from which he or she was conditionally released. Such conditional release shall in no way affect any suspended sentence, a condition of which is that the inmate be admitted to and remain at such institution. (1937, c. 145, s. 1.)

§ 7362(q). **Final discharge.**—Final discharge of any inmate of any institution enumerated in the preceding section may be granted by the superintendent of such institution, under rules adopted by the board of directors or managers, at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate arrives at his or her twenty-first birthday. (1937, c. 145, s. 2.)

CHAPTER 123B

SOIL CONSERVATION DISTRICTS

§ 7395(34). **Title of chapter.**—This chapter may be known and cited as the Soil Conservation Districts Law. (1937, c. 393, s. 1.)

§ 7395(35). **Legislative determinations, and declaration of policy.**—It is hereby declared, as a matter of legislative determination—

A. **The Condition.**—The farm, forest and grazing lands of the state of North Carolina are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. **The Consequences.**—The consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydro-electric power, municipal water supply, drainage developments, farming, and grazing.

C. **The Appropriate Corrective Methods.**—To conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be

discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out, that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments; manurial materials, and fertilizers for the correction of soil deficiencies and/or to promote increased growth of soil-protecting crops; retardation of run-off by increasing the absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of Policy.—It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. (1937, c. 393, s. 2.)

§ 7395(36). **Definitions.** — Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

(3) "Committee" or "state soil conservation committee" means the agency created in section 7395(37).

(4) "Petition" means a petition filed under the provisions of subsection A of section 7395(38) for the creation of a district.

(5) "Nominating petition" means a petition filed under the provisions of section 7395(39) to nominate candidates for the office of supervisor of a soil conservation district.

(6) "State" means the state of North Carolina.

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state.

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Government" or "governmental" includes

the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall have contracted to purchase any lands lying within a district organized under the provisions of this chapter.

(11) "A qualified voter" includes any person qualified to vote in elections by the people under the constitution of this state.

(12) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. (1937, c. 393, s. 3.)

§ 7395(37). State soil conservation committee.

—A. There is hereby established to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the state soil conservation committee. The following shall serve, ex-officio, as members of the committee: The director of the state agricultural extension service, the director of the state agricultural experiment station, and the state forester. The committee may invite the secretary of agriculture of the United States of America to appoint one person who is a resident of North Carolina to serve with the above-mentioned members as a member of the committee. The committee in co-operation with the Land Grant College in the state shall develop a program for soil conservation and for other purposes as provided for in this chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

B. The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require; it shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the seat of the state government, and shall be furnished with the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as

may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. The committee shall designate its chairman, and may, from time to time, change such designation. A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority of the committee in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable. (1937, c. 393, s. 4.)

§ 7395(38). Creation of soil conservation districts.—A. Any twenty-five occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil con-

servation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the state soil conservation committee duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any such petitions.

B. Within thirty days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion of the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography or the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in section two of this chapter. The territory to be included within such boundaries need not be contiguous. If the

committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determined made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of and" and "Against creation of a soil conservation district of the lands below described and lying in the county (ies) of and" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of land lying within the boundaries of the territory, as determined by the state soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The committee shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not

administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section two of this chapter; provided, however, that the committee shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act, with the three supervisors elected as provided hereinafter, as the governing body of the district. Such districts shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this chapter; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointment evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice

issued, and hearing held as aforesaid, that the committee did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

G. After six months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

H. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than twenty-five, the petition may be filed

when signed by two-thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5.)

§ 7395(39). Election of three supervisors for each district.—Within thirty days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation committee to nominate candidates for supervisors of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petitions shall be accepted by the committee unless it shall be subscribed by twenty-five or more qualified voters of such district. Qualified voters may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of three supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference. All qualified voters residing within the district shall be eligible to vote in such election. The three candidates who shall receive the largest number, respectively, of the votes cast in such election shall be elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof. (1937, c. 393, s. 6.)

§ 7395(40). Appointment, qualifications and tenure of supervisors.—The governing body of the district shall consist of five supervisors, elected or appointed as provided hereinabove. The two supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the services which will be required of them in the performance of their duties hereunder.

The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be three years, except that the supervisors who are first appointed shall be designated to serve for terms of one and two years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected or appointed

and has qualified. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term, shall be made in the manner in which the retiring supervisors shall, respectively, have been selected. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the state committee, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. (1937, c. 393, s. 7.)

§ 7395(41). Powers of districts and supervisors.

—A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this chapter:

(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing vegetation, changes in use of land, and the measures listed in subsection C of section 7395(3), on lands owned or controlled by this state or any of its agencies, with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of

such lands or the necessary rights or interest in such lands.

(2) To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter.

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interest therein in furtherance of the purposes and the provisions of this chapter.

(4) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion.

(5) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(7) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained in so far as available from the state forest nursery, operated by the state department of conservation and development in co-operation with the United States department of agriculture.

(8) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to

make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.

(9) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(10) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state. (1937, c. 393, s. 8.)

§ 7395(42). Adoption of land-use regulations.—

The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving the soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district of their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance number, prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance number, prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations, governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to en-

act such proposed ordinance into law unless at least two-thirds of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a two-thirds of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions, requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.

2. Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation.

3. Specifications of cropping programs and tillage practices to be observed.

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in section 7395(35).

The regulations shall be uniform, throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. (1937, c. 393, s. 9.)

§ 7395(43). Enforcement of land-use regulations.

—The supervisors shall have authority to go upon any lands within the district to determine whether

land-use regulations adopted under the provisions of section 7395(42) are being observed. The supervisors are further authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation. (1937, c. 393, s. 10.)

§ 7395(44). Performance of work under the regulations by the supervisors.—Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of section 7395(42) are not being observed on particular lands, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention of control of erosion on other lands within the district, the supervisors may present to the superior court for the county or counties within which the lands of the defendant lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor

with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. This judgment, when filed in accordance with the provisions of section six hundred fourteen of the Code, shall constitute a lien upon such lands. (1937, c. 393, s. 11.)

§ 7395(45). Co-operation between districts.—The supervisors of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. (1937, c. 393, s. 12.)

§ 7395(46). Discontinuance of districts.—At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five occupiers of land lying within the boundaries of such districts may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the (name of the soil conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the

proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 7395(35): Provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificates of the state soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section 7395(35), nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this

chapter, more often than once in five years. (1937, c. 393, s. 13.)

CHAPTER 125

STATE DEBT

Art. 11. Bonds for Permanent Enlargement and Improvement of Educational and Charitable Institutions. 1923 and Subsequently

§ 7472(j). Purpose of bond issue; amount and dates of issue.

Editor's Note.—For act authorizing bonds for permanent improvement of state institutions, see Public Laws 1937, c. 296.

Art. 11(A). Sinking Fund Commission

§ 7472(q)4. Investment of sinking funds.—

(e) Obligations of the state highway and public works commission, issued under the provisions of section six of chapter one hundred and forty-five of the Public Laws of one thousand nine hundred and thirty-one [§ 3846(o2)]: Provided, that the agreed purchase price of such contract shall first be applied to the satisfaction of any obligations the payee county may be due the state or the literary fund or the revolving fund, and the balance, if any, of the purchase price of the said contract shall then be applied to the debt service of such county. (1925, c. 62, s. 5; 1931, c. 415; 1935, c. 146; 1937, c. 82.)

Editor's Note.—The 1937 amendment directed that the above subsection be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

Art. 16. Special Building Fund to Aid Counties in Erection of Schoolhouses

§ 7472(yy1). Payment of loans before maturity; relending.—For the purpose of providing funds to be loaned to the counties of the state for erecting school buildings and providing facilities for maintaining six months school term, the state board of education is authorized to accept payment from any district and/or county for the full amount of loans due the state on loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven before the maturity of such loans.

The state board of education is authorized to relend any payments made by counties to counties for the period that the loans would have run had they not been paid before maturity, and at the same rate of interest.

The state board of education shall follow the laws, rules and regulations set up for making loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven in lending money made available by the payment of loans from the said funds before the maturity date thereof.

In making loans from funds made available from payments on the special building funds before maturity, the state board of education shall be governed by laws and amendments to the constitution enlarging or restricting the borrowing power of

counties and/or municipalities. (1937, c. 115, ss. 1-4.)

CHAPTER 126

STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS

Art. 5(B). Transportation Advisory Commission

§ 7516(e). Commission created.

As to abolition of commission, see § 1112(f1).

Art. 9. State Building Contracts

§ 7534(o). Competitive bids required before letting public construction contracts.—

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company authorized to do business in this state, in an amount equal to not less than two (2%) per cent of the proposal; said deposit to be retained in the event of failure of the successful bidder to execute the contract within ten days after the award or to give satisfactory surety as required herein.

(1937, c. 355.)

Editor's Note.—The 1937 amendment changed the fifth sentence relating to deposit to accompany proposal. The rest of the section, not being affected by the amendment, is not set out here.

Art. 11. State Fair

§ 7534(u). Land set apart.

Editor's Note.—For act providing for repossession by state of portion of land set apart by this section, see Public Acts 1937, c. 44.

Art. 12A. Commission to Examine Public Educational System

§ 7534(cc). Governor directed to appoint commission; powers and duties.—As soon as may be practicable after the ratification of this article, the governor is directed to appoint a commission consisting of not less than seven and not more than nine, the number to be within his discretion, consisting of persons qualified by education, experience, and training, both laymen and educators, to make a thorough examination of the public educational system of this state, its practical workings, its organization and direction, and the results obtained in the instruction and education of youth and fitting and training them for life.

The said commission is clothed with power to examine into any branches of the subject, and of allied subjects or interests in relation thereto, that may enable it to arrive at a satisfactory conclusion respecting the said system and its operation and improvements which may be effected therein. It is authorized and directed to examine into the various laws providing machinery and procedure for the administration of the schools, the control and supervision thereof, methods employed in dealing with the officers and agencies through which school funds are distributed, and with those actually teaching in the schools; shall examine the curriculum or courses of study established in the said schools, with a view to ascertaining whether or not the course of education and training is adequate or advisable and productive of the best results for the youth of the state. The commission shall make

diligent inquiry with respect to the courses now taught and the extent to which training is given, with relation both to the desirability of extending the principle of vocational training in the high schools of the state, and giving an opportunity for more extensive training therein to those who do not desire to pursue their studies in the institutions for higher learning. It shall also make a thorough study with regard to the adequacy of the preparation now obtainable in the public high schools of the state for entrance into colleges and successful prosecution of studies therein, and the facilities and opportunities for further prosecution of such studies in said colleges. (1937, c. 379, s. 1.)

§ 7534(dd). Governor, ex officio chairman; public hearings; co-operation of state departments; services of educational authorities.—The governor shall be ex officio chairman of the commission hereby created, with power to call said commission together at any time he deems it advisable for the purpose of organization and further investigation of the subjects herein mentioned. They may sit in public hearings, invite to the said hearings persons of experience in the subject of the investigation and others whose suggestions may be helpful, and may receive both written and oral presentations upon these subjects.

The executive heads for all state departments and institutions are instructed to co-operate with the commission and to make available to the commission the services of such of their personnel as may, in the judgment of the governor, be helpful to the commission.

The commission is further authorized to accept the time and services of any federal or state educational authorities or agencies, within or without the state of North Carolina, when, in the opinion of the commission, such services may be helpful in the investigation. (1937, c. 379, s. 2.)

§ 7534(ee). Payment of expenses.—The expenses necessary for the conduct of the said investigation, and the payment of expenses to the members of the commission, shall be paid out of the contingency and emergency fund provided in the Appropriation Act of one thousand nine hundred thirty-seven. (1937, c. 379, s. 3.)

§ 7534(ff). Written report to general assembly.—The commission is required to make a written report of its investigation, with its conclusions and recommendations, to the general assembly of one thousand nine hundred thirty-nine, and shall have the same printed and ready for distribution thirty days before the beginning of the one thousand nine hundred thirty-nine session. (1937, c. 379, s. 4.)

Art. 13. Commission to Study Control of Alcoholic Beverages

§ 7534(1). Governor directed to appoint special commission; report to general assembly.

Editor's Note.—As to joint resolution extending time for filing report, etc., see Public Acts 1936, Ex. Sess., p. 32.

Art. 14. State Planning Board

§§ 7534(3)-7534(5): Superseded by Public Laws 1937, c. 345, codified as §§ 7534(5a)-7534(5h).

§ 7534(5a). Board established as an advisory agency of state.—The state planning board, as

provided for by chapter four hundred eighty-eight of the Public Laws of one thousand nine hundred thirty-five [§§ 7534(3)-7534(5)] is hereby established as an advisory agency of the state, under the direction of the governor and as more fully set forth hereinafter. (1937, c. 345, s. 1.)

§ 7534(5b). Membership; terms of office; expenses.—The state planning board shall consist of nine members, appointed by the governor, as follows: Five members to be chosen from state officers or heads of departments of boards, one of whom shall be the director of the department of conservation and development; at least one representative from the University of North Carolina, and the remaining members to be chosen from among the other citizens of the state. The members of the board shall hold office during the pleasure of the governor, and all vacancies shall be filled by the governor, when and as they may occur. The members of the said board shall serve without pay, but they shall be allowed such reasonable expenses as are authorized by the board and incurred in the immediate discharge of their duties, to be paid out of such funds as may be available. (1937, c. 345, s. 2.)

§ 7534(5c). Chairman and secretary; rules and regulations; employees; expenditures; office space and equipment; special surveys and studies.—The governor shall appoint one member of the board to serve as chairman. The board shall elect one member to serve as secretary of the board. The board shall adopt such rules as it may deem proper for the transaction of its business, and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. The board may appoint such employees as it may deem necessary for its work and fix their compensations. The board may also contract with individuals or corporations for such special services as the board may require. The expenditures of the board from funds of the state shall be limited to the amounts appropriated by the general assembly for the specific purpose, or amounts appropriated from the emergency fund. The board shall be supplied with necessary office space and necessary equipment. Upon request of the board, the governor may, from time to time, for the purpose of special surveys or studies under the direction of the board, assign or detail to the board any member of any state department or bureau or agency, or may direct any such department, bureau or agency to make special surveys and studies as requested by the state planning board. (1937, c. 345, s. 3.)

§ 7534(5d). Functions of board.—It shall be the function and duty of the state planning board to make studies of any matters relating to the general development of state or regions within the state or areas of which the state is a part, with the general purpose of guiding and accomplishing a co-ordinated, adjusted, and efficient development of the state. Upon the basis of such studies, and in accordance with the present and future needs and resources, the board shall present, from time to time, reports, plans, maps, charts, descriptive matter and recommendation relating to such conservation, wise use and planned development of the material and human resources of North Carolina as will best promote the health,

safety, morals, order, convenience, prosperity and welfare of the people of the state. (1937, c. 345, s. 4.)

§ 7534(5e). Adoption of plans and recommendations; publicity program; co-operation with other agencies; advice and information relative to state planning; proposed legislation.—The state planning board may, from time to time, adopt, in whole or in part, such plans and recommendations as, in its judgment, may be deemed wise and proper; and may, from time to time, alter, amend and add to such plans; may, in the interest of promoting understanding of and compliance with their recommendations, publish and distribute such plans and recommendations and may employ such means of publicity and education as it may determine; may confer and co-operate with other agencies, federal, state, regional, county or municipal in the accomplishment of common purposes; may, upon request or at its own initiative, furnish advice or information to the governor, the general assembly, state, county, and municipal officers or departments on matters relating to state planning; and may prepare and submit drafts of legislation for the carrying out of any plans they may adopt. (1937, c. 345, s. 5.)

§ 7534(5f). Public boards and officials directed to supply information; general powers.—All public boards and officials shall, upon request, furnish to the state planning board such available information as it may require for its work. In general, the board shall have such powers as may be appropriate, to enable it to fulfill its functions and duties, to promote state planning and to carry out the purposes of this article. (1937, c. 345, s. 6.)

Editor's Note.—This section would seem to imply the power to make rules and regulations necessary for the purposes of the statute. 15 N. C. Law Rev., No. 4, p. 323.

§ 7534(5g). Acceptance and disbursements of contributions.—The state planning board is authorized, in the name of the state, to accept and disburse, under the approval of the director of the budget, any contributions that may be available for the work in which it is engaged, by any state or federal agency or private or public endowment. (1937, c. 345, s. 7.)

§ 7534(5h). Appropriation; approval of expenditures.—There is hereby appropriated a maximum sum of seventy-five hundred dollars (\$7,500.00) out of the general fund revenues of the state, to be used as may be necessary, subject to the approval of the director of the budget, to carry out the purpose of this article, and that such appropriations shall be subject to the same control by the budget bureau as provided for other state appropriations. (1937, c. 345, s. 8.)

Art. 15. Revenue Bonds and Governmental Aid

§ 7534(6). State agencies may issue bonds to finance certain public undertakings.—

Provided, further, that no state department, institution, agency or commission of the state shall make application for or issue any bonds, as provided in this section, after June first, one thousand nine hundred thirty-nine. (1935, c. 479, s. 1; Ex. Sess., 1936, c. 2, s. 1; 1937, c. 323.)

Editor's Note.—Prior to the amendment of 1936 the date in the last proviso was December 31, 1936. The rest of the section, not being affected by the amendments, is not set out

here. Section 3 of the amendatory act ratified certain bonds issued by the University of North Carolina.

§ 7534(8). Approval by governor and council of state necessary; covenants in resolutions authorizing bonds.—

Any resolution or resolutions heretofore or hereafter adopted authorizing the issuance of bonds under this article may contain covenants which shall have the force of contract so long as any of said bonds and interest thereon remain outstanding and unpaid as to (a) the use and disposition of revenue of the undertaking for which the said bonds are to be issued, (b) the pledging of all the gross receipts or any part thereof derived from the operation of the undertaking to the payment of the principal and interest of said bonds including reserves therefor, (c) the operation and maintenance of such undertaking, (d) the insurance to be carried thereon and the use and disposition of the insurance moneys, (e) the fixing and collection of rates, fees and charges for the services, facilities and commodities furnished by such undertaking sufficient to pay said bonds and interest as the same shall become due, and for the creation and maintenance of reasonable reserve therefor, (f) provisions that the undertaking shall not be conveyed, leased or mortgaged so long as any of the bonds and interest thereon remain outstanding and unpaid: Provided, however, that the credit of the state of North Carolina or any of its departments, institutions, agencies or commissions shall not be pledged to the payment of such bonds except with respect to the rentals, profits and proceeds received in connection with the undertaking for which the said bonds are issued, and that none of the appropriations received from the state shall be pledged as security for said bonds. (1935, c. 479, s. 3; Ex. Sess., 1936, c. 2, s. 2.)

Editor's Note.—The 1936 amendment added the above paragraph. The rest of the section, not being affected by the amendment, is not set out here.

Art. 16. State Bureau of Identification and Investigation

§ 7534(9). Governor authorized to create state bureau of identification and investigation; general duties.—In order to secure a more effective administration of the criminal laws of the state, to prevent crime, and to procure the speedy apprehension and identification of criminals, the governor is hereby authorized, in his discretion, to create in his office a state bureau of identification and investigation, which shall be under the supervision and control of the governor. It shall be charged with the performance of the duties hereinafter set out, and particularly have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the governor may direct. (1937, c. 349, s. 1.)

For article discussing this article, see 15 N. C. Law Rev., No. 4, p. 341.

§ 7534(10). Governor authorized to transfer activities of present identification bureau to the

new bureau; photographing and finger printing records.—The records and equipment of the identification bureau now established at Central Prison shall be made available to the said bureau of identification and investigation, and the activities of the identification bureau now established at Central Prison may, in the future, if the governor deem advisable, be carried on by the bureau hereby established; except that the bureau established by this article shall have authority to make rules and regulations whereby the photographing and finger printing of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this state to service upon the roads, may be taken and filed with the bureau. (1937, c. 349, s. 2.)

As to bureau at Central Prison, see §§ 7766(b)-7766(i) of original Code.

§ 7534(11). Crime statistics.—The bureau of identification and investigation shall keep statistics, as far as possible, on all convictions of crime in this state, and for this purpose all courts having final jurisdiction, including superior courts and inferior courts, but excepting courts of justices of the peace, shall, each month, transmit to the bureau a record of all convictions had in such court for the preceding month, in such manner and form as shall be devised by the director of the bureau, acting under the supervision of the governor. All criminal returns and statistics heretofore made to the office of the attorney general shall be made to the said bureau, and this requirement shall replace such requirements as are now made by law for the forwarding of such returns to the office of the attorney general. Such records shall be at all times open to the inspection of the attorney general and his agents, and summarized and tabulated statements thereof, such as are now made in the office of the attorney general and included in his biennial report, shall be furnished to the attorney general for inclusion in the said report. The clerks of the various courts referred to shall make the said returns under the same pains and penalties as now prescribed by law requiring such returns to be made to the office of the attorney general. Where there is no clerk of the court by whom such reports can be made, it shall be the duty of the judge of the court, except courts of justices of the peace having final jurisdiction of criminal cases, to make returns thereof, as provided in this section. (1937, c. 349, s. 3.)

§ 7534(12). Director of the bureau; personnel.—The governor is empowered to appoint a director of the bureau of identification and investigation, who shall serve at the will of the governor, and whose salary shall be such as may be established and fixed under the provisions of chapter two hundred seventy-seven, Public Laws of one thousand nine hundred thirty-one, as amended [§ 7521(m) et seq.]. He is further empowered to appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the bureau. The salaries of such assistants shall be established and fixed under the provisions of chapter two hundred seventy-seven, Public Laws of one thousand nine hundred thirty-one, as amended. The salaries of clerical and stenographic help shall be

the same as now provided for similar employees in other state departments and bureaus. (1937, c. 349, s. 4.)

§ 7534(13). General powers and duties of director and assistants.—The director of the bureau and his assistants are given the same power of arrests as is now vested in the sheriffs of the several counties, and their jurisdiction shall be statewide. The director of the bureau and his assistants shall, at the request of the governor, give assistance to sheriffs, police officers, solicitors, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the commissioner of paroles in the investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the governor. (1937, c. 349, s. 5.)

§ 7534(14). Investigations of lynchings, election frauds, etc.; services subject to call of governor; witness fees and mileage for director and assistants.—The bureau shall, through its director and upon request of the governor, investigate and prepare evidence in the event of any lynching or mob violence in the state; shall investigate all cases arising from frauds in connection with elections when requested to do so by the board of elections, and when so directed by the governor. Such investigation, however, shall in no wise interfere with the power of the attorney general to make such investigation as he is authorized to make under the laws of the state. The bureau is authorized further, at the request of the governor, to investigate cases of frauds arising under the Social Security Laws of the state, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the governor so to do. In all such cases it shall be the duty of the department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the director of the bureau, and of his assistants, may be required by the governor in connection with the investigation of any crime committed anywhere in the state, when called upon by the enforcement officers of the state, and when, in the judgment of the governor, such services may be rendered with advantage to the enforcement of the criminal law.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the director and any of his assistants who are witnesses in cases arising in courts of this state. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the treasurer of the state of North Carolina, and there credited to the bureau of identification and investigation fund. (1937, c. 349, s. 6.)

§ 7534(15). Laboratory and clinical facilities; employment of criminologists; services of scientist, etc., employed by state; radio system.—In the said bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, ex-

amination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the prosecuting officers of the state in the discharge of their duties. In the personnel of the bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the state, both educational and departmental, shall be made available to the bureau, and scientists and doctors now working for the state through its institutions and departments may be called upon by the governor to aid the bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the governor for such service.

The state radio system shall be made available to the bureau for use in its work. (1937, c. 349, s. 7.)

§ 7534(16). Co-operation of local enforcement officers.—All local enforcement officers are hereby required to co-operate with the said bureau, its officers and agents, as far as may be possible, in aid of such investigations and arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s. 8.)

§ 7534(17). Assessment of additional costs upon conviction; officers' benefit fund; bureau fund.—In every criminal case finally disposed of in the criminal courts, excepting courts of justices of the peace, of this state, wherein the defendant is found guilty and assessed with the payment of costs, there shall be assessed against said convicted person one dollar (\$1.00) additional cost, to be collected and paid over to the treasurer of North Carolina in a special fund for the purposes of this article. The local custodian of such cost shall monthly transmit such moneys to the said treasurer, with a statement of the case in which the same has been collected.

Half of such moneys so received shall be set up in a special fund to be known as "The Law Enforcement Officers' Benefit Fund," which shall be used to aid the dependents of law enforcement officers killed or seriously incapacitated while in the discharge of duty. For the purpose of deciding and determining the recipients of such benefits, and the amount thereof to be paid, a committee is hereby provided for, consisting of the director of the bureau, the state auditor, one sheriff and one police officer, the last two to be appointed by the governor and to serve at his will. Such committee shall, under the direction of the governor, promulgate rules and regulations for the proper disbursement of the funds and fixing eligibility as to those who shall be adjudged to be proper recipients of such benefits.

Law enforcement officers in the meaning of this article shall include sheriffs, their appointed dep-

uty sheriffs, police officers, prison wardens and deputy wardens, prison camp superintendents, prison stewards, foremen and guards, highway patrolmen, and any citizens duly deputized as a deputy sheriff by a sheriff in an emergency.

Half of the moneys received from the additional costs shall be set up in a fund to be known as the "Bureau of Identification and Investigation Fund." This fund shall be disbursed by the governor for the operation and maintenance of the bureau—the payment of salaries and costs of equipment—in the event the fund becomes adequate for such expenses. (1937, c. 349, s. 9.)

§ 7534(18). Operations of bureau deferred until sufficient funds provided.—The said bureau of identification and investigation shall not go into operation until, within the discretion of the governor, sufficient funds have been collected hereunder and paid into the state treasury for the purposes of this article. (1937, c. 349, s. 10.)

Art. 17. Commission on Interstate Co-Operation

§ 7534(19). Senate committee on interstate co-operation.—There is hereby established a standing committee of the senate of this state, to be officially known as the senate committee on interstate co-operation, and to consist of five senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the senate. In addition to the regular members, the president of the senate shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 1.)

§ 7534(20). House committee on interstate co-operation.—There is hereby established a similar standing committee of the house of representatives of this state, to be officially known as the house committee on interstate co-operation, and to consist of five members of the house of representatives. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the house of representatives. In addition to the regular members, the speaker of the house of representatives shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 2.)

§ 7534(21). Governor's committee on interstate co-operation.—There is hereby established a committee of administrative officials and employees of this state, to be officially known as the governor's committee on interstate co-operation, and to consist of five members. Its members shall be: the budget director or the corresponding official of this state, ex officio; the attorney general, ex officio; the chief of the staff of the state planning board or the corresponding official of this state, ex officio, and two other administrative officials or employees to be designated by the governor. If there is uncertainty as to the identity of any of the ex officio members of this committee, the governor shall determine the question, and his determination and designation shall be conclusive. The governor shall appoint one of the five members of this committee as its chairman. In addition

to the regular members, the governor shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 3.)

§ 7534(22). North Carolina commission on interstate co-operation.—There is hereby established the North Carolina commission on interstate co-operation. This commission shall be composed of fifteen regular members, namely:

The five members of the senate committee on interstate co-operation.

The five members of the house committee on interstate co-operation, and

The five members of the governor's committee on interstate co-operation.

The governor, the president of the senate and the speaker of the house of representatives shall be ex officio honorary non-voting members of this commission. The chairman of the governor's committee on interstate co-operation shall be ex officio chairman of this commission. (1937, c. 374, s. 4.)

§ 7534(23). Legislative committees constitute senate and house council of American Legislators' Association.—The said standing committee of the senate and the said standing committee of the house of representatives shall function during the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American Legislators' Association. The incumbency of each administrative member of this commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed. (1937, c. 374, s. 5.)

§ 7534(24). Functions and purpose of commission.—It shall be the function of this commission:

(1) To carry forward the participation of this state as a member of the council of state governments.

(2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other state, of the federal government, and of local units of government.

(3) To endeavor to advance co-operation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts,

(b) The enactment of uniform or reciprocal statutes,

(c) The adoption of uniform or reciprocal administrative rules and regulations,

(d) The informal co-operation of governmental offices with one another,

(e) The personal co-operation of governmental officials and employees with one another, individually,

(f) The interchange and clearance of research and information, and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this commission, enable this state to do its part—or more than its part—in forming a

more perfect union among the various governments in the United States and in developing the council of state governments for that purpose. (1937, c. 374, s. 6.)

§ 7534(25). Appointment of delegations and committees; persons eligible for membership; advisory boards.—The commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure inter-governmental harmony, and may perform other functions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on interstate co-operation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards. (1937, c. 374, s. 7.)

§ 7534(26). Reports to the governor and general assembly; expenses; employment of secretary, etc.—The commission shall report to the governor and to the legislature within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this chapter. The commission may employ a secretary and a stenographer, it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the council of state governments, participate with other states in maintaining the said council's district and central secretariats, and its other governmental services. (1937, c. 374, s. 8.)

§ 7534(27). Names of committees designated.—The committees and the commission established by this chapter shall be informally known, respectively, as the senate co-operation committee, the house co-operation committee, the governor's co-operation committee and the North Carolina co-operation commission. (1937, c. 374, s. 9.)

§ 7534(28). Council of state governments a joint governmental agency.—The council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which co-operate through it. (1937, c. 374, s. 10.)

§ 7534(29). Secretary of state to communicate text of measure to officials and governing bodies of other states.—The secretary of state shall forthwith communicate the text of this measure to the governor, to the senate, and to the house of representatives of each of the other states of

the Union, and shall advise each legislature which has not already done so that it is hereby memorialized to enact a law similar to this measure, thus establishing a similar commission, and thus joining with this state in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict. (1937, c. 374, s. 11.)

CHAPTER 128

STATE LANDS

SUBCHAPTER I. ENTRIES AND GRANTS

Art. 5. Grants

§ 7583. Lands conveyed to United States for inland waterway.—

Wherever, in the construction of the said inland waterway, lands theretofore submerged shall be raised above the water by deposit of excavated material, the lands so formed shall become the property of the United States for a distance of one thousand feet on either side of the center of such canal or channel, and the secretary of state is hereby authorized to issue to the United States a grant to the land so formed within the distance above mentioned, the grant to issue upon a certificate furnished to the secretary of state by some authorized official of the United States as above provided. (1913, c. 197; 1937, c. 445.)

Editor's Note.—The 1937 amendment struck out the words "or in the improvement of any other waterway within this state" formerly appearing after the word "waterway" in the second line of the second paragraph of this section. The first paragraph, not being affected by the amendment, is not set out here.

CHAPTER 129

STATE OFFICERS

Art. 3. The Governor

§ 7640(a). To designate "Indian Day."—The governor of North Carolina is hereby empowered to set aside some day which shall be called "Indian Day" on which Indian lore shall receive emphasis in the public schools of the state and among the citizens of North Carolina. (Resolution 54, 1937, p. 957.)

§ 7651(a). Compensation for widows of governors.—All widows of the governors of the state of North Carolina who were married to said governors before or during their term of office as governor of the state of North Carolina and who have attained, or shall hereafter attain, the age of sixty-five years, shall be paid the sum of twelve hundred (\$1,200.00) dollars per annum during the term of their natural lives, the same to be paid in equal monthly installments of one hundred (\$100.00) dollars per month out of the state treasury upon warrant duly drawn thereon: Provided, that no payment shall be made under this section unless and until the council of state shall find that the beneficiary does not have an income adequate for her support. (1937, c. 416.)

Art. 4. Secretary of State

§ 7654. Duties of secretary of state.—

For act transferring administration of Capital Issues Law to secretary of state, see § 3924(aa).

§ 7661. Transmits statutes and reports to other states; statutes, etc., furnished certain universities.—

In order to enable the library of Duke University at Durham to carry out its co-operative plan, undertaken in conjunction with the library of the University of North Carolina, of building up within the state a complete collection of the public documents of the several states and other units of government, through a system of exchanges whereby needless duplication may be avoided, the secretary of state shall, from and after the ratification of this law, furnish said library of Duke University on its request not more than twenty-five copies each of the public, public-local and private laws, the house and senate journals, the legislative documents and all reports and publications of the state and of its several agencies, institutions and departments, and also of the volumes of published opinions of the supreme court; whenever publication of any of the volumes or documents referred to is under supervision of some official other than the secretary of state, then it shall be the duty of such other official to furnish the same as herein required: Provided, that no reprint of any such volumes or documents shall be made in order to comply with the provisions hereof, nor that the volumes or documents requested be necessary for the proper discharge of the duties of any department or agency. (Rev., s. 5351; Code, ss. 3321, 3344; 1868-9, c. 270, ss. 28, 48; 1933, c. 355; 1935, c. 88; 1937, c. 222.)

Editor's Note.—The 1937 amendment directed that the above paragraph be added to this section. The rest of the section, not being affected by the amendment, is not set out.

§ 7667. Distribution of supreme court reports.—The supreme court reports shall be distributed by the secretary of state as follows: To the governor, lieutenant governor, attorney-general, treasurer, secretary of state, auditor, superintendent of public instruction, commissioner of labor and printing, commissioner of agriculture, and insurance commissioner, corporation commission, legislative reference library, the justices of the supreme court and judges of the superior courts, the judges of the federal courts residing in the state, the clerks of the supreme and superior courts, and of the United States courts for North Carolina, and each member of the North Carolina industrial commission, one copy each; to the supreme court library, twelve copies; to the state library, two copies; to the library of the supreme court of the United States, one copy; to the library of the university ten copies, whereof eight shall be for the use of the school of law, and to the library of Wake Forest and Trinity colleges, five copies; to North Carolina State College of Agriculture and Engineering, one copy; and Lenoir Rhyne College and Elon College and Guilford College and to each state and territory in the Union, including the District of Columbia, one copy; and to the Dominion of Canada, to the provinces of Canada, and Australia, and to New Zealand, one copy each, and to each of said states, territories, districts, provinces and dominions which shall be willing to exchange their own similar publications therefor, an additional copy, such publications received in exchange to be sent direct to the library of the university for the use of

the school of law, and one copy each to each court in foreign states as the supreme court may direct. (Rev., s. 5357; Code, s. 3635; 1873-4, c. 34, s. 2; 1876-7, c. 164, s. 2; 1881, c. 107; 1881, c. 104, s. 2; 1885, c. 82; 1891, c. 471; 1899, cc. 37, 667; 1903, c. 689; 1919, c. 195, s. 3; 1925, c. 52; 1927, cc. 36, 87; 1931, c. 113; 1937, c. 262.)

See §§ 7661, 7667(e).

Editor's Note.—The 1937 amendment inserted the words "and each member of the North Carolina industrial commission" in lines thirteen and fourteen of this section.

§ 7667(e). Reports allotted to Davidson and Catawba Colleges.—The secretary of state is hereby authorized and directed to furnish to the libraries at Davidson College and Catawba College, upon application by the librarian, one complete set of the North Carolina supreme court reports, if available. The secretary of state is also authorized and directed to furnish to said colleges one copy of future reports. (1937, c. 260.)

Art. 7. Attorney-General

§ 7694. Duties.

An opinion of the attorney-general, given in the performance of his statutory duty under subsection 5 is advisory only. *Lawrence v. Shaw*, 210 N. C. 352, 186 S. E. 504.

§ 7695(a). Assistants; compensation; assignments.—The attorney general shall be allowed to appoint three assistant attorneys general, and each of such assistant attorneys general shall receive a salary to be fixed by the director of the budget. One assistant attorney general shall be assigned to the state department of revenue, and the salary of the assistant attorney general so assigned shall be paid by the state department of revenue. The other assistant attorneys general shall perform such duties as may be assigned by the attorney general: Provided, however, the provisions of this section shall not be construed as preventing the attorney general from assigning additional duties to the assistant attorney general assigned to the state department of revenue. (1925, c. 207, s. 1; 1937, c. 357.)

Editor's Note.—The 1937 amendment repealed the former section and inserted the above in lieu thereof.

§ 7695(c): Superseded by Public Laws 1937, c. 357, codified as § 7695(a).

CHAPTER 130

STATE PRISON

Art. 3A. Labor on Roads

§ 7748(b). State highway and public works commission created.—A highway and public works commission is hereby created to be and continue an agency of the state government and to be known as "state highway and public works commission." The said commission shall consist of a chairman and ten commissioners; the chairman and three of said commissioners shall be appointed by the governor for a term of six years, and three of said commissioners shall be appointed for a term of four years, and four of said commissioners shall be appointed for a term of two years, the said terms to commence May first, one thousand nine hundred and thirty-seven, and continue until their successors are appointed and qualify: Provided, that the chairman or any commissioner ap-

pointed pursuant to this section may be removed by the governor for cause. In case of the death, resignation, or removal from office of said chairman or any commissioner prior to the expiration of his term of office, his successor shall be appointed by the governor to fill out the unexpired term. At the expiration of the term for which said chairman and commissioners are first appointed, their successors shall be appointed for a term of six years each. The chairman shall devote his entire time and attention to the work of the commission, and shall receive as compensation not exceeding seven thousand five hundred dollars (\$7,500.00) per annum, to be fixed by the governor and the advisory budget commission, payable monthly, and his actual traveling expenses when engaged in the discharge of his duties. The said chairman shall, except as may be otherwise provided by the commission, be vested with all authority of the commission when the commission is not in session, and shall be the executive officer of the said commission and shall execute all orders, rules, and regulations established by said commission. The commissioners shall each receive ten dollars (\$10.00) per day while engaged in the discharge of the duties of his office and his actual traveling expenses. The commissioners shall be so selected that it will be physically possible to divide the state into ten divisions of substantially equal size on the joint bases of area, population and mileage; and said commissioners shall, on or before the first day of July, one thousand nine hundred and thirty-seven, designate the boundary lines of said divisions in such manner that each of said commissioners will be a resident of a separate division: Provided, however, that said division lines may be changed from time to time by a two-thirds vote of the commission and with the consent and approval of the board of county commissioners of the county or counties immediately affected thereby. It is the intent and purpose of this section that said commissioner shall keep himself informed as to the road needs of his particular division and present to the commission from time to time the road needs of said division, but that each of said commissioners shall likewise be a representative of the state at large, and the said commission, in determining all matters and policies, shall act as a body and not individually. The headquarters and main office of the said commission shall be located in Raleigh, and the commission shall meet in its main office at least once in each sixty days, or at such regular time as the commission may by rule provide, and may hold special meetings at any time and place within the state at the call of the chairman or the governor or any three members of the commission. Each member of the commission shall designate some time and place during each calendar month where he will be for the purpose of hearing such matters and things as may be presented to him by the governing bodies of the several counties of his district; and shall advise the chairmen of said governing bodies accordingly. It is the intent and purpose of this section to continue in existence the present state highway and public works commission, subject only to the modifications herein set out, and all portions of the present law not inconsistent with the express provisions of this section are con-

tinued in full force and effect. The terms of office of the present commissioners shall terminate upon the effective date of this section. (1933, c. 172, s. 2; 1935, c. 257, s. 1; 1937, c. 297, s. 1.)

As to authorizing use of county prisoners on roads not within state system, see § 1364(I).

Editor's Note.—The 1937 amendment struck out the former section and inserted the above in lieu thereof. Section 3 of the amendatory act provides: "All of the provisions of chapter two of the Public Laws of one thousand nine hundred and twenty-one and acts amendatory [see § 3846(a) et seq.] thereof are hereby modified and altered so as to conform with the provisions of this act, and all provisions of said chapter of the Public Laws of one thousand nine hundred and twenty-one and acts amendatory thereof not inconsistent with the provisions of this act and not heretofore expressly repealed are re-enacted and continued in full force and effect; and all laws and clauses of laws in conflict with the provisions of this act, to the extent of such conflict, are hereby repealed."

For act to submit claims filed by counties to state highway and public works commission for consideration and settlement, see Public Laws 1937, c. 417.

§ 7748(s). Grading prisoners; discretionary use of stripes.—

The use of uniforms of stripes such as have heretofore been used to designate felons may be used by the prison authorities of the state highway and public works commission as a matter of discipline only, and prisoners, even though convicted of a felony, need not be clothed in such stripes except as a form of discipline for the violation of prison rules. (1933, c. 172, s. 23; 1937, c. 88, s. 1.)

Editor's Note.—The 1937 amendment directed that the above provision be added at the end of this section. The rest of the section, not being affected by the amendment, is not set out.

Art. 4. Paroles

§ 7757(a)1. Governor authorized to fix salary of commissioner of paroles.—The governor of North Carolina be and he is hereby empowered to fix the salary of the commissioner of paroles in any sum not to exceed the amount appropriated for the salary of said commissioner by the general assembly of one thousand nine hundred and thirty-seven. (1937, c. 341.)

CHAPTER 131

TAXATION

SUBCHAPTER I. LEVY OF TAXES (REVENUE ACT OF 1937)

§§ 7767-7880: Superseded by § 7880(1) et seq.

Art. 1. Schedule A. Inheritance Tax

§ 7880(1). General provisions.—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

First. When the transfer is by will or by the intestate laws of this state from any person dying, seized or possessed of the property while a resident of the state; or when the transfer is by settlement, contract, or agreement, or by any court order or otherwise, to any person or persons, by reason of claim or claims arising by virtue of intestate laws, in controversies or contests as to the probate or construction of any will or wills, or any trust or other instrument executed or created by any person dying seized of the property while a resident of this state.

Second. When the transfer is by will or intestate laws of this or any other state or by settlements in controversies over wills, as set forth in the preceding paragraph, of real property or of goods, wares, and merchandise within this state, or of any property, real, personal, or mixed, tangible or intangible, over which the state of North Carolina has a taxing jurisdiction, including state and municipal bonds, and the decedent was a resident of the state at the time of death; when the transfer is of real property or tangible personal property within the state, or intangible personal property that has acquired a situs in this state, and the decedent was a non-resident of the state at the time of death.

Third. When the transfer of property made by a resident, or non-resident, is of real property within this state, or of goods, wares and merchandise within this state, or of any other property, real, personal, or mixed, tangible or intangible, over which the state of North Carolina has taxing jurisdiction, including state and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (a) the possession or enjoyment of, or the income from, the property or (b) the right to designate the persons who shall possess or enjoy the property or the income therefrom. Every transfer by deed, grant, bargain, sale, or gift, made within three years prior to the death of the grantor, vendor, or donor, exceeding three per cent (3%) of his or her estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of this section. So much of the decedent's estate as is represented by gifts on which the gift tax levied in this act has been paid shall not be included in the estate of the donor taxable as inheritance.

Fourth. When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a non-resident decedent when such non-resident decedent's property consists of real property within this state or tangible personal property within the state, or intangible personal property that has acquired a situs in this state, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument.

Fifth. Whenever any person or corporation shall exercise a power or appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will, and the rate shall be determined by the relationship between the beneficiary under the power and the donor; and whenever

any person or corporation having such power of appointment so derived shall, for any reason whatever, omit or fail to exercise the same, in whole or in part, or where for any reason the said power has not been exercised, a transfer taxable under the provisions of this act shall be deemed to take place, to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by will of the donee of the power failing to exercise the same, taking effect at the time of such omission or failure.

Sixth. Whenever any real or personal property, or both, of whatever kind or nature, tangible or intangible, is disposed of by will or by deed to any person or persons for life, or the life of the survivor, or for a term of years, or to any corporation for a term of years, with the power of appointment in such person or persons, or in such corporation, or reserving to the grantor or devisor the power of revocation, the tax, upon the death of the person making such will or deed, shall, on the whole amount of property so disposed of, be due and payable as in other cases, and the said tax shall be computed according to the relationship of the first donee or devisee to the devisor.

Seventh. Where real property is held by husband and wife as tenants by the entirety, the surviving tenant shall be taxable on one-half of the value of such property. (1937, c. 127, s. 1.)

For article discussing this subchapter, see 15 N. C. Law Rev., No. 4, p. 387.

Editor's Note.—The 1937 Revenue Act supersedes all of this subchapter of the 1935 Code except §§ 7880(177)a, 7880(177)b, 7880(184)a and 7880(196).

Liberal Construction.—

In accord with original. See *Reynolds v. Reynolds*, 208 N. C. 578, 581, 182 S. E. 341.

Settlement of Taxes Claimed by Compromise.—The settlement of taxes claimed under this section by compromise, in a court of competent jurisdiction, in view of the bona fide controversies between the parties, and the facts and circumstances of the case, was affirmed on appeal, the matter being a legitimate subject of compromise and all parties affected being duly represented. *Reynolds v. Reynolds*, 208 N. C. 578, 580, 182 S. E. 341.

§ 7880(2). Property exempt.—The following property shall be exempt from taxation under this article:

(a) Property passing to or for the use of the state of North Carolina, or to or for the use of municipal corporations within the state or other political sub-divisions thereof, for exclusively public purposes.

(b) Property passing to religious, charitable, or educational corporations, or to churches, hospitals, orphan asylums, public libraries, religious, benevolent, or charitable organizations, or passing to any trustee or trustees for religious, benevolent, or charitable purposes, where such religious, charitable, or educational institutions, corporations, churches, trusts, etc., are located within the state and not conducted for profit.

(c) Property passing to religious, educational, or charitable corporations, not conducted for profit, incorporated under the laws of any other state, and receiving and disbursing funds donated in this state for religious, educational, or charitable purposes.

(d) The amount of twenty thousand dollars (\$20,000.00), only, of the total proceeds of life insurance policies, when such policy or policies are

payable to a beneficiary or beneficiaries named in such policy or policies, and such beneficiary or beneficiaries are any such person or persons as are designated in section 7880(3), subsection (a): Provided, that no more than twenty thousand dollars (\$20,000.00) of any such policy or policies shall be exempt from taxation, whether in favor of one beneficiary or more, and the exemption thus provided shall be prorated between the beneficiaries in proportion to the amounts received under the policies, unless otherwise provided by the decedent; and also proceeds of all life insurance policies payable to beneficiaries named in subsections (a), (b), and (c) of this section. And also proceeds of all policies of insurance and the proceeds of all adjusted service certificates paid by the United States government to the beneficiary or beneficiaries or heirs-at-law of any deceased soldier of the World War under the present laws of congress or any amendment that may be hereafter made thereto. (1937, c. 127, s. 2.)

Exemptions of property from taxation are to be strictly construed. *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6.

Property is liable for county taxes where it is not used by the city for a governmental purpose, and therefore does not come within the constitutional provision for the exemption of property from taxation (N. C. Const. Art. V, § 5), or within the scope of this section enacted pursuant thereto. *Id.*

Property was held subject to taxation by the county in which the property is situate although owned by a municipal corporation, where the property was held by the municipal corporation purely for business purposes and not for any governmental or necessary public purpose. *Board of Financial Control v. Henderson County*, 208 N. C. 569, 181 S. E. 636, 101 A. L. R. 783.

§ 7880(3). Rate of tax—Class A.—(a) Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue, or lineal ancestor, or husband or wife of the person who died possessed of such property aforesaid, or child adopted by the decedent in conformity with the laws of this state or of any of the United States, or of any foreign kingdom or nation, at the following rates of tax (for each one hundred dollars (\$100.00) or fraction thereof) of the value of such interest:

First \$	10,000 above exemption.....	1 per cent
Over	10,000 and to \$ 25,000.....	2 per cent
Over	200,000 and to 500,000.....	6 per cent
Over	50,000 and to 100,000.....	4 per cent
Over	100,000 and to 200,000.....	5 per cent
Over	200,000 and to 500,000.....	6 per cent
Over	500,000 and to 1,000,000.....	7 per cent
Over	1,000,000 and to 1,500,000.....	8 per cent
Over	1,500,000 and to 2,000,000.....	9 per cent
Over	2,000,000 and to 2,500,000.....	10 per cent
Over	2,500,000 and to 3,000,000.....	11 per cent

(b) The persons mentioned in this class shall be entitled to the following exemptions: Widows, ten thousand dollars (\$10,000.00); each child under twenty-one years of age, five thousand dollars (\$5,000.00); all other beneficiaries mentioned in this section, two thousand dollars (\$2,000.00) each: Provided, a grandchild or grandchildren shall be allowed the single exemption or pro rata part of the exemption of the parent, when the parent of any one grandchild or group of grandchildren is deceased or when the parent is living and does not share in the estate: Provided that any part of the exemption not applied to the share of the

parent may be applied to the share of a grandchild or group of grandchildren of such parent. The same rule shall apply to the taking under a will, and also in case of a specific legacy or devise: Provided, that when any person shall die leaving a widow and child or children under twenty-one years of age, and leaving all or substantially all of his property by will to his wife, the wife shall be allowed an additional exemption of five thousand dollars (\$5,000.00) for each child under twenty-one years of age. (1937, c. 127, s. 3.)

§ 7880(4). Rate of tax—Class B.—Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or descendant of the brother or sister, or shall be the uncle or aunt by blood of the person who died possessed as aforesaid, at the following rates of tax (for each one hundred dollars (\$100.00) or fraction thereof) of the value of such interest:

First \$	5,000	4 per cent
Over	5,000 and to \$ 10,000....	5 per cent
Over	10,000 and to 25,000....	6 per cent
Over	25,000 and to 50,000....	7 per cent
Over	50,000 and to 100,000....	8 per cent
Over	100,000 and to 250,000....	10 per cent
Over	250,000 and to 500,000....	12 per cent
Over	500,000 and to 1,000,000....	14 per cent
Over	1,000,000 and to 1,500,000....	16 per cent
Over	1,500,000 and to 2,000,000....	18 per cent
Over	2,000,000 and to 2,500,000....	20 per cent
Over	2,500,000 and to 3,000,000....	22 per cent
Over	3,000,000	24 per cent

(1937, c. 127, s. 4.)

§ 7880(5). Rate of tax—Class C.—Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of relationship or collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, at the following rates of tax (for each one hundred dollars (\$100.00) or fraction thereof) of the value of such interest:

First \$	10,000	8 per cent
Over	10,000 and to \$ 25,000....	9 per cent
Over	25,000 and to 50,000....	10 per cent
Over	50,000 and to 100,000....	11 per cent
Over	100,000 and to 250,000....	13 per cent
Over	250,000 and to 500,000....	15 per cent
Over	500,000 and to 1,000,000....	17 per cent
Over	1,000,000 and to 1,500,000....	19 per cent
Over	1,500,000 and to 2,000,000....	21 per cent
Over	2,000,000 and to 2,500,000....	23 per cent
Over	2,500,000	25 per cent

(1937, c. 127, s. 5.)

§ 7880(6). Estate tax.—(a) A tax in addition to the inheritance tax imposed by this schedule is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this schedule, whether a resident or non-resident of the state, where the inheritance tax imposed by this schedule is in the aggregate of a lesser amount than the maximum credit of eighty per cent (80%) of the federal estate tax allowed by the Federal Estate Tax Act as contained in the Federal Revenue Act of one thousand nine hundred and twenty-six, or subsequent acts and amendments, because of said tax herein imposed, then the inheritance

tax provided for by this schedule shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this state shall be the maximum amount of credit allowed under said Federal Estate Tax Act; said additional tax shall be paid out of the same funds as any other tax against the estate.

(b) Where no tax is imposed by this schedule because of the exemptions herein or otherwise, and a tax is due the United States under the Federal Estate Tax Act, then a tax shall be due this state equal to the maximum amount of the credit allowed under said Federal Estate Tax Act.

(c) The administrative provisions of this schedule, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by sub-section (a) of this section shall be computed in full accordance with the Federal Estate Tax Act as contained in the Federal Revenue Act of one thousand nine hundred and twenty-six, or subsequent acts and amendments.

(d) If this section, or any sub-section, phrase or clause thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion or portions of this schedule in force at the time of the enactment of this section, nor shall such decision affect the validity of the remaining portion or portions of this section. (1937, c. 127, s. 6.)

§ 7880(7). Deductions. — In determining the clear market value of property taxed under this article, or schedule, the following deductions, and no others, shall be allowed:

(a) Taxes that have become due and payable, and the pro rata part of taxes accrued for the fiscal year that have not become due and payable.

(b) Drainage and street assessments (fiscal year in which death occurred).

(c) Reasonable funeral and burial expenses.

(d) Debts of decedent.

(e) Estate and inheritance taxes paid to other states, and death duties paid foreign countries, and the net amount of federal estate taxes as finally assessed under the Revenue Act of one thousand nine hundred and twenty-six. No deduction will be allowed for federal estate taxes levied by subsequent acts and amendments.

(f) Amount actually expended for monuments not exceeding the sum of five hundred dollars (\$500.00).

(g) Commissions of executors and administrators actually allowed and paid.

(h) Costs of administration, including reasonable attorneys' fees. (1937, c. 127, s. 7.)

§ 7880(8). Where no personal representative appointed, clerk of superior court to certify same to commissioner of revenue.—Whenever an estate subject to the tax under this act shall be settled or divided among the heirs-at-law, legatees or devisees, without the qualification and appointment of a personal representative, the clerk of the superior court of the county wherein the estate is situated shall certify the same to the commissioner of revenue, whereupon the commissioner of revenue shall proceed to appraise said estate and collect the inheritance tax thereon as prescribed by this act. (1937, c. 127, s. 8.)

§ 7880(9). Tax to be paid on shares of stock before transferred, and penalty for violation.—(a) Property taxable within the meaning of this act shall include bonds or shares of stock in any incorporated company incorporated in this state, regardless of whether or not any such incorporated company shall have any or all of its capital stock invested in property outside of this state and doing business outside of this state, and the tax on the transfer of any bonds and/or shares of stock in any such incorporated company owning property and doing business outside of the state shall be paid before waivers are issued for the transfer of such shares of stock. No corporation of this state shall transfer any bonds or stock of said corporation standing in the name of or belonging to a decedent or in the joint names of a decedent and one or more persons, or in trust for a decedent, unless notice of the time of such transfer is served upon the commissioner of revenue at least ten days prior to such transfer, nor until said commissioner of revenue shall consent thereto in writing. Any corporation making such a transfer without first obtaining consent of the commissioner of revenue as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such bonds and/or stock, together with the interest thereon, and in addition thereto a penalty of one thousand dollars (\$1,000.00), which liability for such tax, interest, and penalty may be enforced by an action brought by the state in the name of the commissioner of revenue. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by distribution, or by statute, descent, devise, bequest, grant, deed, bargain, sale, gift, or otherwise. A waiver signed by the commissioner of revenue of North Carolina shall be full protection for any such company in the transfer of any such stock.

(b) Any incorporated company not incorporated in this state and owning property in this state which shall transfer on its books the shares of stock of any resident decedent holder of bonds and/or shares of stock in such company exceeding in value two hundred dollars (\$200.00) before the inheritance tax, if any, has been paid, shall become liable for the payment of said tax; and any property held by such company in this state shall be subject to execution to satisfy name. A receipt or waiver signed by the commissioner of revenue of North Carolina shall be full protection for any such company in the transfer of any such stock. (1937, c. 127, s. 9.)

§ 7880(10). Commissioner of revenue to furnish blanks and require reports of value of shares of stock.—(a) The commissioner of revenue shall prepare and furnish, upon application, blank forms covering such information as may be necessary to determine the amount of inheritance tax due the state of North Carolina on the transfer of any such bonds and/or stock; he shall determine the value of such bonds and/or stock, and shall have full authority to do all things necessary to make full and final settlement of all such inheritance taxes due or to become due.

(b) The commissioner of revenue shall have authority, under penalties provided in this act, to

require that any reports necessary to a proper enforcement of this act be made by any such incorporated company owning property in this state. (1937, c. 127, s. 10.)

§ 7880(11). Life insurance policies.—The proceeds of all life insurance policies payable at or after death of the insured, and whether payable to the estate of the insured or to a beneficiary or beneficiaries named in the policy, shall be taxable at the rates provided for in this article, subject to the exemptions in section 7880(2): Provided, if any part of premiums have been paid by a beneficiary or beneficiaries, credit for such payment may be allowed as a deduction from the proceeds of the policy upon satisfactory proof thereof in determining the tax chargeable against the beneficiary or beneficiaries making such payment. (1937, c. 127, s. 11.)

§ 7880(12). Recurring taxes.—Where property transferred has been taxed under the provisions of this article, such property shall not be assessed and/or taxed on account of any other transfer of like kind occurring within two years from the date of the death of the former decedent: Provided, that this section shall apply only to the transferees designated in sections 7880(3) and 7880(4). (1937, c. 127, s. 12.)

§ 7880(13). Reciprocal provisions of other states.—(a) The terms "death tax" and "death taxes," as used in the five following sub-sections, shall include inheritance, succession, transfer and estate taxes and any taxes levied against the estate of a decedent upon the occasion of his death.

(b) At any time before the expiration of eighteen months after the qualification in any probate court in this commonwealth of any executor of the will or administrator of the estate of any non-resident decedent, such executor or administrator shall file with such court proof that all death taxes, together with interest or penalties thereon, which are due to the state of domicile of such decedent, or to any political sub-division thereof, have been paid or secured, or that no such taxes, interest or penalties are due, as the case may be, unless it appears that letters testamentary or of administration have been issued on the estate of such decedent in the state of his domicile in the four following sub-sections called the domiciliary state.

(c) The proof required by sub-section (b) may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state. If such proof has not been filed within the time limited in sub-section (b), and if within such time it does not appear that letters testamentary or of administration have been issued in the domiciliary state, the register of probate shall forthwith upon the expiration of such time notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate, and shall state in such notice so far as is known to him (a) the name, date of death and last domicile of such decedent, (b) the name and address of each executor or administrator, (c) a summary of the values of the real estate, tangible personalty, and intangible personalty, wherever situated, belonging to such decedent at the time of his death, and (d) the fact

that such executor or administrator has not filed theretofore the proof required in sub-section (b). Such register shall attach to such notice a plain copy of the will and codicils of such decedent, if he died testate, or, if he died intestate, a list of his heirs and next of kin, so far as is known to such register. Within sixty days after the mailing of such notice the official or body charged with the administration of the death tax laws of the domiciliary state may file with such probate court in this commonwealth a petition for an accounting in such estate, and such official or body of the domiciliary state shall, for the purposes of this section, be a party interested for the purpose of petitioning such probate court for such accounting. If such petition be filed within said period of sixty days, such probate court shall decree such accounting, and upon such accounting being filed and approved shall decree either the payment of any such tax found to be due to the domiciliary state or sub-division thereof or the remission to a fiduciary appointed or to be appointed by the probate court, or other court charged with the administration of estates of descendants, of the domiciliary state, of the balance of the intangible personalty after the payment of creditors and expenses of administration in this commonwealth.

(d) No final account of an executor or administrator of a non-resident decedent shall be allowed unless either (1) proof has been filed as required by sub-section (b), or (2) notice under sub-section (c) has been given to the official or body charged with the administration of the death tax laws of the domiciliary state, and such official or body has not petitioned for an accounting under said sub-section within sixty days after the mailing of such notice, or (3) an accounting has been had under said sub-section (c), a decree has been made upon such accounting and it appears that the executor or administrator has paid such sums and remitted such securities, if any, as he was required to pay or remit by such decree, or (4) it appears that letters testamentary or of administration have been issued by the domiciliary state and that no notice has been given under said sub-section (c).

(e) Sub-sections (a) to (d), inclusive, shall apply to the estate of a non-resident decedent, only in case the laws of the domiciliary state contain a provision, of any nature or however expressed, whereby this commonwealth is given reasonable assurance, as finally determined by the commissioner, of the collection of its death taxes, interest and penalties from the estates of decedents dying domiciled in this commonwealth, when such estates are administered in whole or in part by a probate court, or other court charged with the administration of estates of decedents, in such other state.

(f) The provisions of sub-sections (a) to (e), inclusive, shall be liberally construed in order to insure that the domiciliary state of any non-resident decedent whose estate is administered in this commonwealth shall receive any death taxes, together with interest and penalties thereon, due to it from the estate of such decedent. (1937, c. 127, s. 29.)

§ 7880(14). When all heirs, legatees, etc., are discharged from liability.—All heirs, legatees, dev-

isees, administrators, executors, and trustees shall only be discharged from liability for the amount of such taxes, settlement of which they may be charged with, by paying the same for the use aforesaid as hereinafter provided. (1937, c. 127, s. 13.)

§ 7880(15). Discount for payment in six months; interest after twelve months; penalty after two years.—All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor, or vendor, and if the same are paid within six months from the date of the death of the testator, intestate, grantor, donor, vendor, a discount of three per centum (3%) shall be allowed and deducted from such taxes; if not paid within twelve months from date of death of the testator, intestate, grantor, donor, or vendor, such tax shall bear interest at the rate of six per centum (6%) per annum, to be computed from the expiration of twelve months from the date of the death of such testator, intestate, grantor, donor, or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within two years from date of death of testator, intestate, grantor, donor, or vendor, then and in such case a penalty of five per centum (5%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of five per centum (5%) herein imposed may be remitted by the commissioner of revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the commissioner of revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay: Provided, that time for payment and collection of such tax may be extended by the commissioner of revenue for good reasons shown. (1937, c. 127, s. 14.)

§ 7880(16). Collection to be made by sheriff if not paid in two years.—If taxes imposed by this act are not paid within two years after the death of the decedent, it shall be the duty of the commissioner of revenue to certify to the sheriff of the county in which the estate is located the amount of tax due upon such inheritance, and the sheriff shall collect the same as other taxes, with an addition of two and one-half per cent (2½%) as sheriff's fees for collecting same, which fees shall be in addition to any salary or other compensation allowed by law to the sheriffs for their services; and the sheriff is hereby given the same rights of levy and sale upon any property upon which the said tax is payable as is given in the Machinery Act for the collection of other taxes. The sheriff shall make return to the commissioner of revenue of all such taxes within thirty days after collection. (1937, c. 127, s. 15.)

§ 7880(17). Executor, etc., shall deduct tax.—The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to said tax shall deduct therefrom at the rate prescribed, or if the legacy or share in the estate be not money, he shall demand payment of a sum to be computed at the same

rates upon the appraised value thereof for the use of the state; and no executor or administrator shall pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law; and every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the state shall be paid by him to the proper officer without delay. (1937, c. 127, s. 16.)

Cited in *Reynolds v. Reynolds*, 208 N. C. 578, 182 S. E. 341.

§ 7880(18). Legacy for life, etc., tax to be retained, etc., upon the whole amount.—If the legacy or devise subject to said tax be given to a beneficiary for life or for a term of years, or upon condition or contingency, with remainder to take effect upon the termination of the life estate or the happening of the condition or contingency, the tax on the whole amount shall be due and payable as in other cases, and said tax shall be apportioned between such life tenant and the remainderman, such apportionment to be made by computation based upon the mortuary and annuity tables set out as sections one thousand seven hundred and ninety and one thousand seven hundred and ninety-one of the Consolidated Statutes, and upon the basis of six per centum (6%) of the gross value of the estate for the period of expectancy of the life tenant in determining the value of the respective interests. When property is transferred or limited in trust or otherwise, and the rights, interest, or estate of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate, within the discretion of the revenue commissioner, which on the happening of any of the said contingencies or conditions would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred, and the commissioner of revenue shall assess the tax on such property. (1937, c. 127, s. 17.)

§ 7880(19). Legacy charged upon real estate, heir, or devisee to deduct and pay to executor, etc.—Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the commissioner of revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this act shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from

the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the state: Provided further, that no lien for inheritance or estate taxes which accrued prior to May first, one thousand nine hundred and twenty-three, shall attach or affect the land. (1937, c. 127, s. 18.)

§ 7880(20). Computation of tax on resident and non-resident decedents.—A tax shall be assessed on the transfer of property, including property specifically devised or bequeathed, made subject to tax as aforesaid in this state of a resident or non-resident decedent, if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such decedent had been a resident of this state, and all his property, real and personal, had been located within this state, as such taxable property within this state bears to the entire estate, wherever situated. It shall be the duty of the personal representative to furnish to the commissioner of revenue such information as may be necessary or required to enable the commissioner to ascertain a proper computation of his tax. Where the personal representative fails or refuses to furnish information from which this assessment can be made, the property in this state liable to tax under this act shall be taxed at the highest rate applicable to those who are strangers in blood. (1937, c. 127, s. 19.)

§ 7880(21). Regulations governing access to safe deposits of a decedent.—No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or in control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest which would thereafter be assessed thereon under this act; but the commissioner of revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting lock boxes for the safe keeping of valuable papers and personal effects, or having in their possession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative, or co-tenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of

the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of any such lock box and to furnish a copy of such inventory to the commissioner of revenue, to the executor, administrator, personal representative, or co-tenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person or persons having possession of such lock box. The clerk of the superior court shall be paid by the representative of said estate at the time of his qualification the sum of two dollars (\$2.00) for the services rendered as hereinbefore prescribed in this section, and in addition thereto he shall receive the same mileage as is now allowed by law to witnesses for going from his office to any place located in his county to perform such services. The clerks of the superior court of the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local acts in conflict with this act are hereby repealed. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the commissioner of revenue a notice, in such form as the commissioner of revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.

Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this act on the succession to such securities, deposits, assets, or property, but in any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry. (1937, c. 127, s. 21½.)

§ 7880(22). Duties of the clerks of the superior court.—(a) It shall be the duty of the clerk of the superior court to obtain from any executor or administrator, at the time of the qualification of such executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical; the approximate value and character of the property or estate, both real and personal; the relationship of the heirs-at-law, legatees, devisees, etc., to the decedent, and forward the same to the commissioner of revenue on or before the tenth day of each month; and the commissioner of revenue shall furnish the several clerks blanks upon which to make said report, but the failure to so furnish blanks shall not relieve the clerk from the duty herein imposed. The clerk shall make no report of a death where the estate of a decedent is less than two thousand dollars (\$2,000.00) in value, when the beneficiary is husband or wife or child or grandchild of the decedent. Any clerk of the superior court who shall

fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars (\$100.00) to be recovered by the commissioner of revenue in an action to be brought by the commissioner of revenue.

(b) It shall also be the duty of the clerk of the superior court of each of the several counties of the state to enter in a book, prepared and furnished by the commissioner of revenue, to be kept for that purpose, and which shall be a public record, a condensed copy of the settlement of inheritance taxes of each estate, together with a copy of the receipt showing payment, or a certificate showing no tax due, as shall be certified to him by the commissioner of revenue.

(c) For these services, where performed by the clerk, the clerk shall be paid by the commissioner of revenue, when certificates and receipts are sent in to be recorded, as follows: For recording the certificate of the commissioner of revenue showing no tax due, the sum of fifty cents (50c). For recording the certificate of the commissioner of revenue showing that the tax received by the state is one hundred dollars (\$100.00) or less, he shall be paid the sum of one dollar (\$1.00). For recording the certificate of the commissioner of revenue showing that the tax received by the state is more than one hundred dollars (\$100.00) and not over five hundred dollars (\$500.00) he shall be paid the sum of two dollars (\$2.00). For recording the certificate of the commissioner of revenue showing that the tax received by the state is more than five hundred dollars (\$500.00) he shall be paid the sum of five dollars (\$5.00), which sum shall be the maximum amount paid for recording the certificate of the commissioner of revenue for any one estate: Provided, that where the decedent owns real estate in one or more counties, other than the county in which the administration of the estate is had, then the fee of the clerks of the court of such other counties for recording the certificate of the commissioner of revenue shall be fifty cents (50c) each, and the same fee shall be paid for like service by the clerks in case of the settlement of the estates of non-residents. The clerk of the superior court shall receive the sum of fifty cents (50c) for making up and transmitting to the commissioner of revenue the report required in this section, containing a list of persons who died leaving property in his county during the preceding month, etc.: Provided further, that where the clerk of the superior court has failed or neglected to make the report required of him in this section, in that case he shall only receive for recording the certificate of the commissioner of revenue the sum of fifty cents (50c).

The clerks of the superior court of the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local acts in conflict with this act are hereby repealed. (1937, c. 127, s. 20.)

§ 7880(23). Information by administrator and executor.—Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs-at-law and their relationship to decedent, and every executor

shall prepare a like statement, accompanied by a copy of the will, showing the relationship to the decedent of all legatees, distributees, and devisees named in the will, and the age at the time of death of the decedent of all legatees, distributees, devisees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, together with the postoffice address of executor, administrator, or trustee. If any of the heirs-at-law, distributees, and devisees are minor children of the decedent, such statement shall also show the age of each of such minor children. The statement shall also contain a complete inventory of all the real property of the decedent located in and outside the state, and of all personal property, wherever situate, of the estate, of all insurance policies upon the life of the decedent, together with an appraisal under oath of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by this statute, so far as they may be ascertained at the time of filing such statement; and also the full statement of all gifts or advancements made by deed, grant, or sale to any person or corporation, in trust or otherwise, within three years prior to the death of the decedent. The statement herein provided for shall be filed with the commissioner of revenue at Raleigh, North Carolina, within six months after the qualification of the executor or administrator, upon blank forms to be prepared by the commissioner of revenue. If any administrator or executor fails or refuses to comply with any of the requirements of this section, he shall be liable to a penalty in the sum of five hundred dollars (\$500.00), to be recovered by the commissioner of revenue in action to be brought by the commissioner of revenue to collect such sum in the superior court of Wake county against such administrator or executor. The commissioner of revenue, for good cause shown, may remit all or any portion of the penalty imposed under the provisions of this section. Every executor or administrator may make a tentative settlement of the inheritance tax with the commissioner of revenue, based on the sworn inventory provided in this section: Provided, that this does not apply to estates of less than two thousand dollars (\$2,000.00) in value when the beneficiaries are husband or wife or children or grandchildren, or parent or parents of the decedent. If any executor, administrator, collector, committee, trustee or any other fiduciary within or without this state holding or having control of any funds, property, trust or estate, the transfer of which becomes taxable under the provisions of this act, shall fail to file the statements herein required, within the times herein required, the commissioner of revenue is authorized and shall be required to secure the information herein required from the best sources available, and therefrom assess the taxes levied hereunder, together with the penalties herein and otherwise provided. (1937, c. 127, s. 21.)

§ 7880(24). Supervision by commissioner of revenue.—The commissioner of revenue shall have complete supervision of the enforcement of all provisions of the Inheritance Tax Act and the collections of all inheritance taxes found to be due there-

under, and shall make all necessary rules and regulations for the just and equitable administration thereof. He shall regularly employ such deputies, attorneys, examiners, or special agents as may be necessary for the reasonable carrying out of its full intent and purpose. Such deputies, attorneys, examiners, or special agents shall, as often as required to do so, visit the several counties of the state to inquire and ascertain if all inheritance taxes due from estates of decedents, or heirs-at-law, legatees, devisees, or distributees thereof have been paid; to see that all statements required by this act are filed by administrators and executors, or by the beneficiaries under wills where no executor is appointed; to examine into all statements filed by such administrators and executors; to require such administrators and executors to furnish any additional information that may be deemed necessary to determine the amount of tax that should be paid by such estate. If not satisfied, after investigation, with valuation returned by the administrator or executor, the deputy, attorney, examiner, or appraiser shall make an additional appraisal after proper examination and inquiry, or may, in special cases, recommend the appointment by the commissioner of revenue of a special appraiser who, in such case, shall be paid five dollars (\$5.00) per day and expenses for his services. The administrator or executor, if not satisfied with such additional appraisal, may appeal within thirty days to the commissioner of revenue, which appeal shall be heard and determined as other cases. From this decision the administrator or executor shall have the right to appeal to the superior court of the county in which said estate is situated for the purpose of having said issue tried; said appeal to be made in the same way and manner as is now provided by law for appeals from the decisions of the public utilities commission: Provided, that the tax shall first be paid, or satisfactory surety bond in double the amount of any alleged deficiency shall be filed with the commissioner pending an appeal; and if it shall be determined upon trial that said tax or any part thereof was illegal or excessive, judgment shall be rendered therefor with interest, and the amount of tax so adjudged overpaid or declared invalid shall be certified by the clerk of court to the commissioner of revenue, who is authorized and directed to draw his account on the state treasurer for the amount thereof. (1937, c. 127, s. 22.)

§ 7880(25). Proportion of tax to be repaid upon certain conditions.—Whenever debts shall be proven against the estate of a decedent after the distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state treasury, or shall be refunded by the state treasurer, if it has been so paid in, upon certificate of the commissioner of revenue. (1937, c. 127, s. 23.)

§ 7880(26). Commissioner of revenue may order executor, etc., to file account, etc.—If the commissioner of revenue shall discover that reports and accounts have not been filed, and the tax, if any, has not been paid as provided in this act, he

shall issue a citation to the executor, administrator, or trustee of the decedent whose estate is subject to tax, to appear at a time and place therein mentioned, not to exceed twenty days from the date thereof, and show cause why said report and account should not be filed and said tax paid; and when personal service cannot be had, notice shall be given as provided for service of summons by publication in the county in which said estate is located; and if said tax shall be found to be due, the said delinquent shall be adjudged to pay said tax, interest and cost; if said tax shall remain due and unpaid for a period of thirty days after notice thereof, the commissioner of revenue shall certify the same to the sheriff, who shall make collection of said tax, cost and commissions for collection, as provided in section 7880(15). (1937, c. 127, s. 24.)

§ 7880(27). Failure of administrator, executor, or trustee to pay tax.—Any administrator, executor, or trustee who shall fail to pay the lawful inheritance taxes due upon any estate in his hands or under his control within two years from the time of his qualification shall be liable for the amount of the said taxes, and the same may be recovered in an action against such administrator, executor, or trustee, and the sureties on his official bond. Any clerk of the court who shall allow any administrator, executor, or trustee to make a final settlement of his estate without having paid the inheritance tax due by law, and exhibiting his receipt from the commissioner of revenue therefor, shall be liable upon his official bond for the amount of such taxes. (1937, c. 127, s. 25.)

§ 7880(28). Uniform valuation.—(a) If the value of any estate taxed under this schedule shall have been assessed and fixed by the federal government for the purpose of determining the federal taxes due thereon prior to the time the report from the executor or administrator is made to the commissioner of revenue under the provisions of this act, the amount or value of such estate so fixed, assessed, and determined by the federal government shall be stated in such report. If the assessment of the estate by the federal government shall be made after the filing of the report by the executor or administrator with the commissioner of revenue, as provided in this act, the said executor or administrator shall, within thirty days after receipt of notice of the final determination by the federal government of the value or amount of said estate as assessed and determined for the purpose of fixing federal taxes thereon, make report of the amount so fixed and assessed by the federal government, under oath or affirmation, to the commissioner of revenue. If the amount of said estate as assessed and fixed by the federal government shall be in excess of that theretofore fixed or assessed under this schedule for the purpose of determining the amount of taxes due the state from said estate, then the commissioner of revenue shall reassess said estate and fix the value thereof at the amount fixed, assessed, and determined by the federal government, unless the said executor or administrator shall, within thirty days after notice to him from the commissioner of revenue, show cause why the valuation and assessment of said estate as theretofore made should not be

changed or increased. If the valuation placed upon said estate by the federal government shall be less than that theretofore fixed or assessed under this act, the executor or administrator may, within thirty days after filing his return of the amount so fixed or assessed by the federal government, file with the commissioner of revenue a petition to have the value of said estate reassessed and the same reduced to the amount as fixed or assessed by the federal government. In either event the commissioner of revenue shall proceed to determine, from such evidence as may be brought to his attention or which he shall otherwise acquire, the correct value of the said estate, and if valuation is changed, he shall reassess the taxes due by said estate under this act and notify the executor or administrator of such fact. In the event the valuation on said estate shall be decreased, and if there shall have been an overpayment of the tax, the said commissioner shall, within sixty days after the final determination of the value of said estate and the assessment of the correct amount of tax against the same, refund the amount of such excess tax theretofore paid.

(b) If the executor or administrator shall fail to file with the commissioner of revenue the return under oath or affirmation, stating the amount of value at which the estate was assessed by the federal government as provided for in this section, the commissioner of revenue shall assess and collect from the executor or administrator a penalty equal to twenty-five per cent (25%) of the amount of any additional tax which may be found to be due by such estate upon reassessment and reappraisal thereof, which penalty shall under no condition be less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500.00), and which cannot be remitted by the commissioner of revenue except for good cause shown. The commissioner of revenue is authorized and directed to confer quarterly with the department of internal revenue of the United State government to ascertain the value of estates in North Carolina which have been assessed for taxation by the federal government, and he shall co-operate with the said department of internal revenue, furnishing to said department such information concerning estates in North Carolina as said department may request. (1937, c. 127, s. 26.)

§ 7880(29). Executor defined. — Wherever the word "executor" appears in this act it shall include executors, administrators, collectors, committees, trustees, and all fiduciaries. (1937, c. 127, s. 27.)

§ 7880(29)a. Additional remedies for enforcement of tax. — In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the commissioner of revenue in any court of competent jurisdiction in this state, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or

in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until the said taxes have been fully paid. (1937, c. 127, s. 28.)

Art. 2. Schedule B. License Taxes

§ 7880(30). Taxes under this article.—Taxes in this article or schedule shall be imposed as a state license tax for the privilege of carrying on the business, exercising the privilege, or doing the act named, and nothing in this act shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this article or schedule.

(a) If the business made taxable or the privilege to be exercised under this article or schedule is carried on at two or more separate places, a separate state license for each place or location of such business shall be required.

(b) Every state license issued under this article or schedule shall be for twelve months, shall expire on the thirty-first day of May of each year, and shall be for the full amount of the tax prescribed: Provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirty-first day of May of each year, then such licensee shall be required to pay one-half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirty-first day of May, next following. Every county, city and town license issued under this article or schedule shall be for twelve months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one-half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.

(c) The state license thus obtained shall be and constitute a personal privilege to conduct the business named in the state license, shall not be transferable to any other person, firm, or corporation, and shall be construed to limit the person, firm, or corporation name in the license to conducting the business and exercising the privilege named in the state license to the county and/or city and location specified in the state license, unless otherwise provided in this article or schedule: Provided, that if the holder of a license under this schedule moves the business for which a license has been paid to another location, a new license may be issued to the licensee at a new location, for the balance of the license year, upon surrender of the original license for cancellation and the pay-

ment of a fee of five dollars (\$5.00) for each license certificate reissued.

(d) Whenever, in any section of this article or schedule, the tax is graduated with reference to the population of the city or town in which the business is to be conducted or the privilege exercised, the minimum tax provided in such section shall be applied to the same business or privilege when conducted or exercised outside of the municipality, unless such business is conducted or privilege exercised within one mile of the corporate limits of such municipality, in which event the same tax shall be imposed and collected as if the business conducted or the privilege exercised were inside of the corporate limits of such municipality: Provided, that with respect to taxes in this article, assessed on a population basis, the same rates shall apply to incorporated towns and unincorporated places or towns alike, with the best estimate of population available being used as a basis for determining the tax in unincorporated places or towns. The term "places or towns" means any unincorporated community, point or collection of people having a geographical name by which it may be generally known, and is so generally designated.

(e) All state taxes imposed by this article shall be paid to the commissioner of revenue, or to one of his deputies; shall be due and payable on or before the first day of June of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent state license and privilege taxes: Provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this article or schedule after the thirty-first day of May and prior to the thirty-first day of the following May of any year, then such person, firm, or corporation shall apply for and obtain a state license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such state license shall be and constitute a delinquent payment of the state license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes: Provided further, that the taxes levied in subsection (e) of section one hundred twenty-six of chapter three hundred seventy-one, Public Laws of one thousand nine hundred thirty-five, and subsection (c) of section one hundred twenty-six and one-half of chapter three hundred seventy-one, Public Laws of one thousand nine hundred thirty-five, and subsection (b) of section one hundred twenty-seven of chapter three hundred seventy-one, Public Laws of one thousand nine hundred thirty-five, shall continue in effect until July first, one thousand nine hundred thirty-seven.

(f) The taxes imposed and the rates specified in this article or schedule shall apply to the subjects taxed on and after the first day of June, one thousand nine hundred thirty-seven, and prior to said date the taxes imposed and the rates specified in the Revenue Act of one thousand nine hundred thirty-five shall apply.

(g) It shall be the duty of a grantee, transferee,

or purchaser of any business or property subject to the state license taxes imposed in this article to make diligent inquiry as to whether the state license tax has been paid, but when such business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the state license taxes imposed under this article, such property, while in the possession of such innocent purchaser, shall not be subject to any lien for such state license taxes.

(h) All county or municipal taxes levied by the board of county commissioners of any county, or by the board of aldermen or other governing body of any municipality within this state, under the authority conferred in this act, shall be collected by the sheriff or tax collector of such county and by the tax collector of such city, and the county or municipal license shall be issued by such officer.

(i) Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any section of this article or schedule shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, which fine shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax. (1937, c. 127, s. 100, c. 249, s. 1.)

Cited in *State v. Warren*, 211 N. C. 75, 189 S. E. 108.

§ 7880(31). Amusement parks.—Every person, firm, or corporation engaged in the business of operating a park, open to the public as a place of amusement, and in which there may be either a bowling alley, trained animal show, penny or nickel machine for exhibiting pictures, theatrical performance, or similar entertainment, shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such amusement park, and shall pay for such license the following tax:

State license for two months.....	\$200.00
State license for four months.....	400.00
State license for eight months.....	600.00
State license for twelve months.....	800.00

This section shall not apply to bathing beaches which are not operated for more than four months each year.

(a) The licensee shall have the privilege of doing any or all the things set out in this section; but the operation of a carnival, circus, or a show of any kind that moves from place to place shall not be allowed under the state license provided for in this section.

(b) Counties shall not levy a license tax on the business taxed under this section. (1937, c. 127, s. 102.)

§ 7880(32). Amusements — traveling theatrical companies, etc.—Every person, firm, or corporation engaged in the business of a traveling theatrical, traveling moving picture, and/or traveling vaudeville company, giving exhibitions or performances in any hall, tent, or other place not licensed under sections 7880(31) and 7880(34), whether on account of municipal ownership or otherwise, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and pay for such license a tax of twenty-five dollars

(§25.00) for each day or part of a day's exhibits or performances: Provided, that

(a) Artists exhibiting paintings or statuary work of their own hands shall only pay two dollars (\$2.00) for such state license.

(b) Such places of amusement as do not charge more than a total of fifty cents (50c) for admission at the door, including a reserved seat, and shall perform or exhibit continuously in any given place as much as one week, shall be required to pay for such state license a tax of twenty-five dollars (\$25.00) per week.

(c) The owner of the hall, tent, or other place where such amusements are exhibited or performances held shall be liable for the tax.

(d) In lieu of the state license tax, hereinbefore provided for in this section, such amusement companies, consisting of not more than ten performers, may apply for an annual state-wide license, and the same may be issued by the commissioner of revenue for the sum of three hundred dollars (\$300.00), paid in advance, prior to the first exhibition in the state, shall be valid in any county of this state, and shall be in full payment of all state license taxes imposed in this section.

(e) Any traveling organization which exhibits animals or conducts side shows in connection with its exhibitions or performances shall not be taxed under this section, but shall be taxed as herein otherwise provided.

(f) The owner, manager, or proprietor of any such amusements described in this section shall apply in advance to the commissioner of revenue for a state license for each county in which a performance is to be given.

That upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.] upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purposes of this act.

(g) Counties, cities and towns may levy a license tax not in excess of the license tax levied by the state. (1937, c. 127, s. 103.)

§ 7880(33). Amusements — manufacturing, selling, leasing, or distributing moving picture films or checking attendance at moving picture shows. — Every person, firm, or corporation engaged in the business of manufacturing, selling, or leasing, furnishing, and/or distributing films to be used in moving pictures within this state shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license a tax of six hundred and twenty-five dollars (\$625.00).

Any person, firm, or corporation engaged under

contract or for compensation in the business of checking the attendance at any moving picture or show for the purpose of ascertaining attendance or amount of admission receipts at any theatre or theatres shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax of two hundred and fifty dollars (\$250.00).

Counties, cities, and towns shall not levy a license tax on the business taxed under this section. (1937, c. 127, s. 104.)

§ 7880(34). Amusements — moving pictures or vaudeville shows—admissions. — Every person, firm, or corporation engaged in the business of operating a moving picture show or place where vaudeville exhibitions or performances are given or operating a theatre or opera house where public exhibitions or performances are given for compensation shall apply for and obtain in advance from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such state license for each room, hall, or tent used the following base tax:

In cities or towns of less than 1,500 population	\$ 25.00
In cities or towns of 1,500 and less than 3,000 population	62.50
In cities or towns of 3,000 and less than 5,000 population	125.00
In cities or towns of 5,000 and less than 10,000 population	175.00
In cities or towns of 10,000 and less than 15,000 population	275.00
In cities or towns of 15,000 and less than 25,000 population	375.00
In cities or towns of 25,000 population or over	425.00

(a) For any moving picture show operated more than two miles from the business center of any city having a population of twenty-five thousand or over (for the purpose of this provision, the term "business center" to be defined as the intersection of the two principal business streets of the city), the base tax levied shall be two hundred dollars (\$200.00).

In addition to the base tax levied in the above schedule of this section, such person, firm, or corporation shall pay an additional tax upon the gross receipts of such business at the rate of tax upon all such gross receipts levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.] upon retail sales of merchandise. Reports shall be made to the commissioner of revenue in such form as he may prescribe within the first ten days of each month, covering all such gross receipts for the previous month and the additional tax herein levied shall be paid monthly at the time such reports are made. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax. Provided, if the tax upon admissions herein levied is not added to the admission price as a separate charge to any exhibition of motion pictures shown under percentage royalty contracts, the gross receipts, with reference to such royalty contracts,

shall be deemed to be the gross receipts from admissions after the percentage tax upon gross receipts shall have been paid or deducted.

(b) Upon any and all other forms of entertainment and amusement not otherwise taxed or specifically exempted in this act, including athletic contests of all kinds, high school and elementary school contests, for which an admission is charged in excess of fifty cents (50c), including football, baseball, basketball, dances, wrestling, and boxing contest, an annual license tax of five dollars (\$5.00) shall be paid for each location where such charges are made, and an additional charge upon the gross receipts at the rate of tax levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.] upon retail sales of merchandise, the additional tax upon gross receipts to be levied and collected as provided in this section for motion picture shows, or in accordance with such regulations of payments as may be made by the commissioner of revenue. The tax levied in this subsection shall apply to all privately owned toll bridges, including all charges made for all vehicles, freight and passenger, and the minimum charge of twenty-five cents (25c) for admission shall not apply to bridge tolls.

(c) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half the base tax levied in this section. (1937, c. 127, s. 105, c. 366.)

§ 7880(35). Amusements—circuses, menageries, wild west, dog and/or pony shows, etc.—Every person, firm, or corporation engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other show, exhibition or performance similar thereto, or not taxed in other sections of this article, shall apply for and obtain a state license from the commissioner of revenue for the privilege of engaging in such business, and pay for such license the following tax for each day or part of a day:

(a) Such shows and/or exhibitions traveling on railroads and requiring transportation of:

Not more than two cars.....	\$ 30.00
Three to five cars, inclusive.....	45.00
Six to ten cars, inclusive.....	90.00
Eleven to twenty cars, inclusive.....	125.00
Twenty-one to thirty cars, inclusive.....	175.00
Thirty-one to fifty cars, inclusive.....	250.00
Over fifty cars.....	300.00

(b) Such shows and/or exhibitions traveling by automobiles, trucks, or other vehicles, other than railroad cars, and requiring transportation by:

Not over two vehicles.....	\$ 7.50
Three to five vehicles.....	10.00
Six to ten vehicles.....	15.00
Eleven to twenty vehicles.....	25.00
Twenty-one to thirty vehicles.....	45.00
Thirty-one to fifty vehicles.....	60.00
Fifty-one to seventy-five vehicles.....	75.00
Seventy-six to one hundred vehicles.....	100.00
Over one hundred vehicles, per vehicle in excess thereof.....	5.00

It is the intent of this subsection that every vehicle used in transporting circus property or per-

sonnel, whether owned by the circus or by others, shall be counted in computing the tax.

(c) Each side show, curiosity show, or other similar show, exhibiting on the same or contiguous lots with a circus, the tax shall be fifteen dollars (\$15.00) per day or part of a day.

(d) Every person, firm, or corporation by whom any show or exhibition taxed under this section is owned or controlled shall file with the commissioner of revenue, not less than five days before entering this state for the purpose of such exhibitions or performances therein, a statement, under oath, setting out in detail such information as may be required by the commissioner of revenue covering the places in the state where exhibitions or performances are to be given, the character of the exhibition, the mode of travel, the number of cars or other conveyances used in transferring such shows, and such other and further information as may be required. Upon receipt of such statement, the commissioner of revenue shall fix and determine the amount of state license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the commissioner of revenue, with full and particular instructions as to the state license tax to be paid. Before giving any of the exhibitions of performances provided for in such statement, the person, firm, or corporation making such statement shall pay the commissioner of revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the commissioner of revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the commissioner of revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.

(e) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the commissioner of revenue; and if the statement required in this section has not been filed as provided for herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy commissioner, the commissioner of revenue shall cause his division deputy to attend at one or more points in the state where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of state license tax with which such person, firm, or corporation is taxable, and to collect such tax or give proper instructions for the collection of such tax.

(f) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city, or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay

a state license of one thousand dollars (\$1,000.00) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the commission of revenue or his duly authorized deputy.

(g) The provisions of this section, or any other section of this act, shall not be construed to allow, without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the state license tax imposed in this section.

(h) Every such person, firm, or corporation who shall give any of such exhibitions or performances mentioned in this section within this state, before the statement provided for has been filed with the commissioner of revenue, or before the state license tax has been paid, or which shall, after the filing of such statement, give any such exhibition or performance taxable at a higher rate than the exhibition or performance authorized by the commissioner of revenue upon the statement filed, shall pay a state license tax of fifty per cent (50%) greater than the tax hereinbefore prescribed, to be assessed and collected either by the commissioner of revenue or by his division deputy.

Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.] upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purposes of this act.

(i) In lieu of the tax levied in section 7880(83), each circus, or other form of amusement taxed under this section, advertising by means of outdoor advertising displays, a bill posting or as otherwise defined in section 7880(83), shall pay a tax of one hundred dollars (\$100.00) for a state-wide license for the privilege of advertising in this manner, said tax to be in addition to the other taxes levied in this section.

(j) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one-half of the license tax levied by the state, but shall not levy a parade tax or a tax under subsection (i) of this section. (1937, c. 127, s. 106.)

§ 7880(36). Amusements—carnival companies, etc.—Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, moving pictures and vaudeville shows, museums and menageries, merry-go-rounds, ferris wheels, riding devices, and other like amusements and enterprises, conducted for profit, under the same general management, or an aggregate of shows, amusements, eating places, riding devices, or any of them operating together on the same lot or contiguous lots or streets, traveling from place to place, whether owned and actually operated by separate persons, firms, or corporations or not, filling week-stand engagements, or giving week-stand exhibitions, under canvas or not, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business or amusement, and shall pay for such license for each week, or part of a week, a tax of two hundred dollars (\$200.00): Provided, that when a person, firm, or corporation exhibits only riding devices which are not a part of, nor used in connection with, any carnival company the tax shall be ten dollars (\$10.00) per week for each such riding device, and no additional tax shall be levied by counties, cities and towns under this proviso.

(a) This section shall not repeal any local act prohibiting any of the shows, exhibitions, or performances mentioned in this section, or to limit the authority of the board of county commissioners of any county, or the board of aldermen or other governing body of any city or town, in prohibiting such shows, exhibitions, or performances.

If the commissioner of revenue shall issue a state license for any such show, exhibition, or performance in any county or municipality having a local statute prohibiting the same, then the said state license shall not authorize such show, exhibition, or performance to be held in such county or municipality, but the commissioner of revenue shall refund, upon proper application, the tax paid for such state license.

(b) No person, firm, or corporation, nor any aggregation of same, giving such shows, exhibitions, or performances, shall be relieved from the payment of the tax levied in this section, regardless of whether or not the state derives a benefit from same. Nor shall any carnival operating or giving performances or exhibitions, in connection with any fair in North Carolina, be relieved from the payment of tax levied in this section. It is the intent and purpose of this section that every person, firm, or corporation, or aggregation of same which is engaged in the giving of such shows, exhibitions, performances, or amusements, whether the whole or a part of the proceeds are for charitable, benevolent, educational, or other purposes whatsoever, shall pay the state license taxes provided for in this section.

It is not the purpose of this act to discourage agricultural fairs in the state, and to further this cause, no carnival company will be allowed to play a "still date" in any county where there is a regularly advertised agricultural fair, fifteen days prior to the dates of said fair. An agricultural fair shall be construed as meaning one that has operated at least one year prior to the passage of this act.

Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.] upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon the gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority or supervision as may be necessary to effectuate the purposes of this act.

Nothing herein contained shall prevent the American Legion Posts in North Carolina from holding fairs or tobacco festivals on any dates which they may select, provided said fairs and festivals have heretofore been held as annual events.

(c) Counties may levy and collect the same license tax as the state, and cities and towns may levy a license tax not in excess of the sum of two hundred dollars (\$200.00). (1937, c. 127, s. 107.)

§ 7880(37). Amusements—certain exhibitions, performances, and entertainments exempt from license tax.—All exhibitions, performances, and entertainments, except as in this article expressly mentioned as not exempt, produced by local talent exclusively, and for the benefit of religious, charitable, benevolent, or educational purposes, and where no compensation is paid to such local talent shall be exempt from the state license tax. (1937, c. 127, s. 108.)

§ 7880(38). Attorneys-at-law and other professions.—Every practicing attorney-at-law, practicing physician, veterinary surgeon, osteopath, chiropractor, chiropodist, dentist, oculist, optician, optometrist, any person practicing any professional art of healing for a fee or reward, civil engineer, electrical engineer, mining engineer, mechanical engineer, architect and landscape architect, photographer, canvasser for any photographer, agent of a photographer in transmitting pictures or photographs to be copied, enlarged, or colored (including all persons enumerated in this section employed by the state, county, municipality, a corporation, firm, or individual), and every person, whether acting as an individual, as a member of a partnership, or as an officer and/or agent of a corporation, who is engaged in the business of selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, or who is engaged in the business of leasing or offering to lease, renting or offering to rent, or of collecting any rents as agents for another for compensation, or who is engaged in the business of soliciting and/or negotiating loans on real estate as agent for another for a commission, brokerage and/or other compensation, shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business or profession, or the doing of the act named, and shall pay for such license twenty-five dollars (\$25.00).

Every person engaged in the public practice of

accounting as a principal, or as a manager of the business of public accountant, shall pay for such license twenty-five dollars (\$25.00), and in addition shall pay a license of twelve and fifty one-hundredths (\$12.50) dollars for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

Every licensed mortician or embalmer shall in like manner apply for and obtain from the commissioner of revenue a state-wide license for practicing his profession, whether for himself or in the employ of another, of ten dollars (\$10.00).

(a) Only one-half of the tax levied in this section shall be collected from those persons whose gross receipts from the business or profession for the preceding year did not exceed one thousand dollars (\$1,000.00).

(b) License revocable for failure to pay tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the commissioner of revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next term of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person twenty days before the next term of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been, and such order of suspension shall be binding upon all courts, boards and commissions having authority of law in this state with respect to the granting or continuing of license to practice any such profession.

(c) Counties, cities, or towns shall not levy any license tax on the business or professions taxed under this section; and the state-wide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this state, except the same shall not apply to photographers, canvassers of any photographers, agents of a photographer in transmitting pictures or photographs to be copied, enlarged, or colored, as set out in the first paragraph of this section, and counties, cities or towns may levy a tax not in excess of that levied by the state. (1937, c. 127, s. 109.)

Persons Making "Negatives" Are Photographers Subject to License Tax.—To solicit persons to have their photographs taken, arrange for the sitting, and actually have the camera present and take what is popularly called a picture, but in fact is a "negative," which is the outline of the subject on glass, is engaging within the state in the profession or business of photography within the meaning of this section. *Lucas v. Charlotte*, 14 F. Supp. 163, 167.

Although the "negatives" are sent to another state for development the assessment of the tax under this section on photographers does not constitute an interference with or burden upon interstate commerce. *Id.*

This section gives to each county and city the privilege of levying a similar tax upon photographers. *Lucas v. Charlotte*, 14 F. Supp. 163 165.

Discriminatory Statute Applying Only to Certain Real Estate Brokers Is Unconstitutional.—Ch. 241, Public-Local Laws of 1927, requiring real estate brokers and salesmen in certain designated counties to be licensed by a real estate commission on the basis of moral character and proficiency in the public interest, and requiring the payment of a license fee in addition to the license required by this section, was held unconstitutional as discriminatory. *State v. Warren*, 211 N. C. 75, 189 S. E. 108.

§ 7880(39). Detectives.—Every person, whether acting as an individual, as a member of a partnership, or as an officer and/or agent of a corporation, who is engaged in business as a detective or what is ordinarily known as "secret service work," or who is engaged in the business of soliciting such business, shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business, and shall pay for such license a tax of twenty-five dollars (\$25.00): Provided, any such person regularly employed by United States government, any state or political subdivision of any state shall not be required to pay license herein provided for. (1937, c. 127, s. 110.)

§ 7880(41). Real estate auction sales. — (a) Every person, firm, or corporation engaged in the business of conducting auction sales of real estate for profit or compensation shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license a tax of two hundred and fifty dollars (\$250.00).

(b) This section shall not apply to sales for foreclosure of liens or sales made by order of court.

(c) Counties, cities, and towns may levy a tax on the business taxed under this section not in excess of twelve and fifty one-hundredths dollars (\$12.50) for each sale conducted in the county, city, or town: Provided, that the total tax levied by any county, city, or town on said business during any year shall not exceed twenty-five dollars (\$25.00). (1937, c. 127, s. 111.)

§ 7880(42). Coal and coke dealers.—(a) Every person, firm, or corporation, either as agent or principal, engaged in and conducting the business of selling coal or coke in carload lots, or in greater quantities, shall be deemed a wholesale dealer, and shall apply for and procure from the revenue commissioner a state license, and pay for such license the sum of seventy-five dollars (\$75.00): Provided, that if such wholesale dealer shall also sell coal or coke in less than carload lots, he shall not be subject to the retailer's license tax provided in this section.

(b) Every person, firm, or corporation engaged in and conducting the business of selling coal or coke at retail shall apply for and procure from the commissioner of revenue a state license and shall pay for such license for each city or town in which such coal or coke is sold or delivered, as follows:

In cities or towns of less than 2,500 population	\$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00

In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 25,000 population	50.00
In cities or towns of 25,000 and over	75.00

Dealers or peddlers in coal who sell in quantities of not more than five hundred pounds shall pay a state license tax of five dollars (\$5.00).

(c) No county shall levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state.

(d) The provisions of this section shall not apply to those engaged in mining coal upon their own or leased property and selling the same either at wholesale or retail: Provided further, that any person, firm or corporation soliciting orders for pool cars of coal to be distributed without profit shall be subject to license tax. (1937, c. 127, s. 112.)

Cited in *Atlantic Ice, etc., Co. v. Maxwell*, 210 N. C. 723, 188 S. E. 381.

§ 7880(43). Collecting agencies.—Every person, firm, or corporation engaged in the business of collecting, for a profit, claims, accounts, bills, notes, or other money obligations for others and of rendering an account for same, shall be deemed a collection agency, and shall apply for and receive from the commissioner of revenue a state license for the privilege of engaging in such business, and pay for such license a tax of fifty dollars (\$50.00).

(a) This section shall not apply to a regularly licensed practicing attorney-at-law.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 113.)

§ 7880(44). Undertakers, embalmers and retail dealers in coffins.—Every person, firm, or corporation engaged in the business of burying and/or embalming the dead, or in the retail of coffins, shall apply for and procure from the revenue commissioner a state license for transacting such business within this state, and shall pay for such license the following tax:

In cities or towns of less than 500 population	\$ 10.00
In cities or towns of 500 and less than 5,000 population	25.00
In cities or towns of 5,000 and less than 10,000 population	40.00
In cities or towns of 10,000 and less than 15,000 population	50.00
In cities or towns of 15,000 and less than 25,000 population	75.00
In cities or towns of 25,000 population or over	100.00

This section shall not apply to a cabinet-maker (who is not an undertaker) who makes coffins to order.

No county shall levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 114.)

§ 7880(45). Dealers in horses and mules.—(a) Any person, firm, or corporation engaged in the

business of buying and selling horses and/or mules, and who continuously for the last three years listed a poll or property for taxation in this state, shall apply for and procure from the commissioner of revenue a state license for conducting such business, and pay for such license a tax of twelve dollars and fifty cents (\$12.50), which amount of tax, however, shall only be for the privilege of buying and/or selling one carload, and for each additional carload purchased, an additional tax of five dollars (\$5.00) per car shall be paid semi-annually to the commissioner of revenue.

(b) Every person, firm, or corporation engaged in the business of buying and selling horses and/or mules, who or which has not continuously for the last three years listed a poll or property for taxation in this state, shall apply for and procure from the commissioner of revenue a state license for conducting such business, and pay for such license a tax of fifty dollars (\$50.00), which amount of tax, however, shall only be for the privilege of buying and/or selling one carload, and for each additional carload purchased an additional tax of ten dollars (\$10.00) per car shall be paid semi-annually to the commissioner of revenue.

(c) For the purpose of computing this tax, twenty-five horses and/or mules shall be considered a carload, and for cars containing more than this number the tax shall be twenty cents per head for such horses and/or mules purchased under subsection (a) of this section, and forty cents per head for such horses and/or mules purchased under subsection (b) of this section.

(d) The tax imposed in this section shall apply to all purchases by such dealers, whether shipped into this state by railroad or brought in otherwise.

(e) Every person, firm, or corporation engaged in the business described in this section shall keep a full, true, and accurate record of all sales, invoices, and freight bills covering such purchases and sales of all horses and/or mules until such sales, invoices, and freight bills have been checked by a deputy commissioner of revenue.

(f) A separate license shall be required for each county and for each place in each county where a separate place of business is maintained: Provided, however, any such person, firm, or corporation engaging in such business described in this section in more than one place or county in this state may, upon the payment of one hundred and twenty-five dollars (\$125.00) to the commissioner of revenue, procure a state-wide license, good in any county of the state, and shall also pay the tax herein provided for each carload.

(g) This section shall not apply to persons dealing solely and exclusively in horses and/or mules of their own raising, if such horses and/or mules were raised in this state.

(h) Any person, firm, or corporation required to procure from the commissioner of revenue a license under this section, who shall sell or offer for sale, by principal or agent, any horse and/or mule without having obtained such license, or shall fail, neglect, or refuse to pay the taxes specified in this section when due and payable, shall, in addition to other penalties imposed by this act, be deemed guilty of a misdemeanor, and upon conviction shall be fined one hundred dollars

(\$100.00) and/or imprisoned not less than thirty days, in the discretion of the court.

(i) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 115.)

§ 7880(46). Phrenologists.—Any person engaged in the practice of phrenology for compensation shall procure from the commissioner of revenue a state license for engaging in such practice, and shall pay for same a tax of one hundred dollars (\$100.00) for each county in which such person does business.

Counties, cities, and towns may levy any license tax on the business taxed in this section. (1937, c. 127, s. 116.)

§ 7880(47). Bicycle dealers.—Any person, firm, or corporation engaged in the business of buying and/or selling bicycles, supplies and accessories shall apply for and procure a state license from the commissioner of revenue for the privilege of transacting such business, and shall pay a tax for such license as follows:

In cities or towns of less than 10,000 population	\$10.00
In cities or towns of 10,000 and less than 20,000 population	20.00
In cities or towns of 20,000 population or more	25.00

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 117.)

§ 7880(48). Pawnbrokers.—Every person, firm, or corporation engaged in and conducting the business of lending or advancing money or other things of value for a profit, and taking as a pledge for such loan specific articles of personal property, to be forfeited if payment is not made within a definite time, shall be deemed a pawnbroker, and shall pay for the privilege of transacting such business an annual license as follows:

In cities or towns of less than 10,000 population	\$200.00
In cities or towns of 10,000 and less than 15,000 population	250.00
In cities or towns of 15,000 and less than 20,000 population	300.00
In cities or towns of 20,000 and less than 25,000 population	350.00
In cities or towns of 25,000 population or more	400.00

(a) Before such pawnbroker shall receive any article or thing of value from any person or persons, on which a loan or advance is made, he shall issue a duplicate ticket, one to be delivered to the owner of said personal property and the other to be attached to the article, and said ticket shall have an identifying number on the one side, together with the date at the expiration of which the pledger forfeits his right to redeem, and on the other a full and complete copy of this subsection; but such pawnbroker may, after the pledger has forfeited his right to redeem the specific property pledged, sell the same at public auction, deducting from the proceeds of sale the money or fair value of the thing advanced, the

interest accrued, and the cost of making sale, and shall pay the surplus remaining to the pledger.

(b) Any person, firm, or corporation transacting the business of pawnbroker without a license as provided in this section, or violating any of the provisions of this section, shall be guilty of a misdemeanor and fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(c) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 118.)

§ 7880(49). Cash registers, adding machines, typewriters, refrigerating machines, washing machines, etc.—Every person, firm, or corporation engaged in the business of selling and/or delivering, and/or renting cash registers, typewriters, adding or bookkeeping machines, billing machines, check protectors or protectographs, kelvinators, frigidaire, or other refrigerating machines, lighting systems, washing machines, mechanically or electrically operated burglar alarms, addressograph machines, multigraph and other duplicating machines, vacuum cleaners, mechanically or electrically operated oil burners and coal stokers, card punching, assorting and tabulating machinery, shall apply for and procure from the commissioner of revenue a state license for each place where such business is transacted in this state, and shall pay for such license a tax of ten dollars (\$10.00).

Counties, cities, and towns shall not levy a license tax on the business taxed in this section. (1937, c. 127, s. 119.)

§ 7880(50). Sewing machines.—(a) Every person, firm, or corporation engaged in the business of selling sewing machines within this state shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business and shall pay for such license a tax of one hundred dollars (\$100.00) per annum for each such make of machines sold or offered for sale.

(b) In addition to the annual license tax imposed in sub-section (a) of this section, such person, firm, or corporation engaged in the business taxed under this section shall pay a tax at the rate of tax levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.], on retail sales of merchandise on the total receipts during the preceding year from the sale, lease, or exchange of sewing machines and/or accessories within the state, which said tax shall be paid to the commissioner of revenue at the time of securing the annual license provided for in sub-section (a) of this section: Provided, that the tax on sales in the preceding year, levied in this sub-section, shall apply only for the fiscal year ending May thirty-first, one thousand nine hundred thirty-five: Provided further, that on and after June first, one thousand nine hundred thirty-five, the additional tax on sales levied in this sub-section shall be assessed and collected under the provisions of article V, Schedule E, of this act [§ 7880(156)a et seq.], the same as the tax on the sales of other merchandise.

(c) Any person, firm, or corporation obtaining a license under the foregoing sections may em-

ploy agents and secure a duplicate copy of such license for each such agent by paying a tax of ten dollars (\$10.00) to the commissioner of revenue. Each such duplicate license so issued shall contain the name of the agent to whom it is issued, shall not be transferable, and shall license the licensee to sell or offer for sale only the sewing machine sold by the holder of the original license.

(d) Any merchant or dealer who shall purchase sewing machines from a manufacturer or a dealer who has paid the license tax provided for in this section may sell such sewing machines without paying the annual state-wide license tax provided for in sub-section (a), but shall procure the duplicate license provided for in sub-section (c) of this section: Provided, that the tax imposed by this sub-section shall be the only tax required to be paid by dealers in second-hand sewing machines exclusively.

(e) Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties imposed in this act, pay an additional tax of double the state-wide annual license, and the duplicate tax imposed in this section.

(f) No county shall levy a license tax on the business taxed under this section, except that the county may levy a license tax not in excess of five dollars (\$5.00) on each agent in a county who holds duplicate license provided for in this section.

Cities and towns shall not levy a license tax on the business taxed under this section. (1937, c. 127, s. 120.)

§ 7880(51). Peddlers.—(a) Any person, firm, or corporation who or which shall carry from place to place any goods, wares, or merchandise, and offer to sell or barter the same, or actually sells or barter the same, shall be deemed a peddler, except such person, firm, or corporation who or which is a wholesale dealer, with an established warehouse in this state and selling only to merchants for resale, and shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

Peddler, on foot, for each county.....	\$10.00
Peddler, with horse or other animal, and with or without vehicle, each county, for each vehicle	15.00
Peddler, with vehicle propelled by motor or other mechanical power, for each county, for each vehicle	25.00

(b) Any person, firm, or corporation employing the service of another as a peddler, whether on a salary or commission basis, shall be liable for the payment of taxes levied in this section: Provided, however, any person peddling fruits, vegetables or products of the farm shall pay a license tax of twenty-five dollars (\$25.00) per year, which license shall be state-wide. No county shall levy an additional tax under this sub-section, but cities and towns may levy a tax under this sub-section equal to the state tax.

(c) Any person, firm, or corporation who or which sells or offers to sell from a cart, wagon, truck, automobile, or other vehicle operated over and upon the streets and/or highways within this

state any fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section and shall pay the annual license tax levied in sub-section (a) of this section with reference to the character of vehicle employed. Any person, firm, or corporation who or which sells or offers for sale from any railway car fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section, and shall pay an annual tax of twenty-five dollars (\$25.00). Nothing in this section shall apply to the sale of all farm products raised on the premises owned or occupied by the person, firm, or corporation, his or its bona fide agent or employee selling same.

(d) Every itinerant salesman or merchant who shall expose for sale, either on the street or in a house rented temporarily for that purpose, any goods, wares, or merchandise, bankrupt stock, or fire stock, not being a regular merchant in such county, shall apply for in advance and procure a state license from the commissioner of revenue for the privilege of transacting such business, and shall pay for such license a tax of one hundred dollars (\$100.00) in each county in which he shall conduct or carry on such business.

(e) Every person, firm, or corporation, not being a regular retail merchant in the state of North Carolina, who shall display samples, goods, wares, or merchandise in any hotel room, or in any house rented or occupied temporarily, for the purpose of securing orders for the retail sale of such goods, wares, or merchandise so displayed, shall apply for in advance and procure a state license from the commissioner of revenue for the privilege of displaying such samples, goods, wares, or merchandise, and shall pay an annual privilege tax of two hundred fifty dollars (\$250.00), which license shall entitle such person, firm or corporation to display such samples, goods, wares, or merchandise in any county in this state.

(f) The provisions of this section shall not apply to any person, firm, or corporation who sells or offers for sale books, periodicals, printed music, ice, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, products of the dairy, poultry, eggs, livestock, or articles of their own individual manufacture, but shall apply to medicines, drugs, or articles assembled.

(g) The board of county commissioners of any county in this state, upon proper application, may exempt from the annual license tax levied in this section Confederate soldiers, disabled veterans of the Spanish-American War, disabled soldiers of the World War, who have been bona fide residents of this state for twelve or more months continuously, and the blind who have been bona fide residents of this state for twelve or more months continuously, widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to peddle within the limits of such county without payment of any license tax to the state.

(h) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of the annual license levied by the state. But the board of county commissioners of any county may levy a license tax on the business taxed in this section not in excess of that levied

by the state for each unincorporated town or village in the county with a population of one thousand or more within a radius of one mile in which such business is engaged in.

No county, city, or town shall levy any license tax under this section upon the persons so exempted in this section, nor upon drummers selling by wholesale: Provided, the Public-Local Laws relating to any county or city in this state in conflict with this section are hereby repealed. (1937, c. 127, s. 121.) ✓

Paragraphs (f) and (h) relate exclusively to privilege taxes upon peddlers. State v. Bridgers, 211 N. C. 235, 238, 189 S. E. 869.

Subsection (h) Does Not Prohibit Levying of City Tax.—A tax levied under the general authority given a city in its charter, authorizing the levying of a tax upon trades and businesses carried on within its corporate limits is not such a tax prohibited by subsection (h) of this section. The prohibition relates to license taxes levied "under this section." The tax complained of was not levied "under this section." State v. Bridgers, 211 N. C. 235, 239, 189 S. E. 869.

§ 7880(53). Contractors and construction companies.

(a) Every person, firm, or corporation who, for a fixed price, commission, fee, or wage offers or bids to construct within the state of North Carolina any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, electric or steam railway, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, the cost of which exceeds the sum of ten thousand dollars (\$10,000.00), shall apply for and obtain from the commissioner of revenue an annual state-wide license, and shall pay for such license a tax of one hundred dollars (\$100.00) at the time of or prior to offering or submitting any bid on any of the above enumerated projects.

(b) In addition to the tax levied in sub-section (a) of this section, every person, firm, or corporation who, for a fixed price, commission, fee, or wage, undertakes or executes a contract for the construction, or who superintends the construction of any of the above enumerated projects, shall before or at the time of entering into such projects, and/or such contract, apply for and procure from the commissioner of revenue a state-wide license, and shall pay for such license the following tax:

When the total contract price or estimated cost of such project is over:

\$ 5,000 and not more than \$ 10,000...	\$ 25.00
10,000 and not more than 50,000...	50.00
50,000 and not more than 100,000...	125.00
100,000 and not more than 250,000...	175.00
250,000 and not more than 500,000...	300.00
500,000 and not more than 750,000...	400.00
750,000 and not more than 1,000,000...	500.00
1,000,000	625.00

(c) The application for license under sub-section (b) of this section shall be made to the commissioner of revenue and shall be accompanied by the affidavit of the applicant, stating the contract price, if known, and if the contract price is not known, his estimate of the entire cost of the said improvement or structure, and if the applicant proposes to construct only a part of said improvement or structure, the contract price, if known, or

his estimated cost of the part of the project he proposes to superintend or construct.

In the event the construction of any of the above mentioned improvements or structures shall be divided and let under two or more contracts to the same person, firm, or corporation, the several contracts shall be considered as one contract for the purpose of this act, and the commissioner of revenue shall collect from such person, firm, or corporation the license tax herein imposed as if only one contract had been entered into for the entire improvement or structure.

(d) In the event any person, firm, or corporation has procured a license in one of the lower classes provided for in sub-section (b) of this section, and constructs or undertakes to construct or to superintend any of the above mentioned improvements or structures or parts thereof, the completed cost of which is greater than that covered by the license already secured, application shall be made to the commissioner of revenue, accompanied by the license certificate held by the applicant, which shall be surrendered to the commissioner of revenue, and upon paying the difference between the cost of the license surrendered and the price of the license applied for, the commissioner of revenue shall issue to the applicant the annual state-wide license applied for, showing thereon that it was issued on the surrender of the former license, and payment of the additional tax.

(e) No employee or sub-contractor of any person, firm, or corporation who or which has paid the tax herein provided for, shall be required to pay the license tax provided for in this section while so employed by such person, firm, or corporation.

(f) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax as a fee for a builder's permit or otherwise not in excess of ten dollars (\$10.00) when the license provided for under this section has been paid: Provided, that this sub-section shall not be construed to prevent the collection of building, electrical, and plumbing inspection charges by municipalities to cover the actual cost of said inspection.

(g) The tax under the section shall not apply to the business taxed in section 7880(86). (1937, c. 127, s. 122, c. 249, s. 5.)

§ 7880(53)a. Installing elevators and automatic sprinkler systems.—Every person, firm, or corporation engaged in the business of selling or installing cable-hoist passenger or freight elevators, or automatic sprinkler systems shall apply for and procure from the commissioner of revenue an annual state-wide license for the transaction of such business in this state, and shall pay for such license a tax of fifty dollars (\$50.00). Counties, cities, and towns may levy a tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 122½.)

§ 7880(54). Mercantile agencies.—Every person, firm, or corporation engaged in the regular business of reporting the financial standing of persons, firms, or corporations for compensation shall be deemed a mercantile agency, and shall apply for and procure from the commissioner of revenue a state-wide license for the privilege of transacting such business within this state, and

shall pay for such license a tax of five hundred dollars (\$500.00), the said tax to be paid by the principal office in the state, and if no such principal office in this state, then by the agent of such mercantile agency operating in this state: Provided, the taxes for the mercantile agency doing special service for not more than one industry shall be two hundred fifty dollars (\$250.00). Provided, further, that any mercantile agency whose credit reporting business is local and confined to the making of credit reports upon persons, firms, or corporations in one city or county only, shall pay an annual license tax of fifty dollars (\$50.00).

(a) Any person representing any mercantile agency which has failed to pay the license tax provided for in this section shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(b) Counties, cities, or towns shall not levy any license tax under this section. (1937, c. 127, s. 123, c. 451.)

§ 7880(55). Gypsies and fortune tellers.—(a) Every company of gypsies or strolling bands of persons, living in wagons, tents, or otherwise, who or any of whom trade horses, mules, or other things of value, or receive reward for telling or pretending to tell fortunes, shall apply for in advance and procure from the commissioner of revenue a state license for the privilege of transacting such things, and shall pay for such license a tax of five hundred dollars (\$500.00) in each county in which they offer to trade horses, mules, or other things of value, or to practice the telling of fortunes or any of their crafts. The amount of such license tax shall be recoverable out of any property belonging to any member of such company.

(b) Any person or persons, other than those mentioned in sub-section (a) of this section, receiving rewards for pretending to tell and/or telling fortunes, practicing the art of palmistry, clairvoyance and other crafts of a similar kind, shall apply for in advance and procure from the commissioner of revenue a state license for the privilege of practicing such arts or crafts, and shall pay for such license a tax of two hundred dollars (\$200.00) for each county in which they offer to practice their profession or crafts: Provided, that the tax levied under this section shall not apply to fortune tellers or other artists practicing the art of palmistry, clairvoyance, and other crafts of a similar kind, when appearing under contract in regularly licensed theatres taxed under section 7880(34).

(c) Any county, city, or town may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 124.)

§ 7880(56). Lightning-rod agents.—(a) No manufacturer or dealer, whether person, firm, or corporation, shall sell, or offer for sale, in this state any brand of lightning-rod, and no agent of such manufacturer or dealer shall sell, or offer for sale, or erect any brand of lightning-rod until such brand has been submitted to and approved by the insurance commissioner and a license granted for its sale in this state. The fee for such license, including seal, shall be fifty dollars (\$50.00).

(b) Upon written notice from any manufacturer or dealer licensed under the preceding sub-section of the appointment of a suitable person to act as his agent in this state, and upon filing an application for license upon the prescribed form, the insurance commissioner may, if he is satisfied as to the reputation and moral character of such applicant, issue him a license as general agent of such manufacturer or dealer. Said license shall set forth the brand of lightning-rod licensed to be sold, and the fee for such license, including seal, shall be fifty dollars (\$50.00).

(c) Such general agent may appoint local agents to represent him in any county in the state by paying to the insurance commissioner a fee of ten dollars (\$10.00) for each such county. Upon filing application for license of such local agent on a prescribed form and paying a fee of three dollars (\$3.00) for each county in which said applicant is to operate, the insurance commissioner may, if he is satisfied that such applicant is of good repute and moral character, and is a suitable person to act in such capacity, issue him a license to sell and erect any brand of lightning-rod approved for sale by the general agent in such county applied for.

(d) Each general agent shall submit to the insurance commissioner semi-annually, on January thirty-first and July thirty-first, upon prescribed forms, a sworn statement of gross receipts from the sale of lightning-rods in this state during the preceding six months, and pay a tax thereon of eighty (80) cents on each one hundred dollars (\$100.00), such returns to be accompanied by an itemized list showing each sale, the county in which sold, and the agent making the sale.

(e) No county, city, or town shall levy a license or privilege tax exceeding twenty dollars (\$20.00) on any dealer having a general office or selling from a receiving point.

(f) Licenses issued under this section are not transferable, are valid for only one person, and revocable by the insurance commissioner for good cause after a hearing.

(g) Every agent licensed under this section shall, upon demand, exhibit his license to any officer of the law or citizen, and any person, firm, or corporation acting without a license or selling or offering for sale any brand of lightning-rod not approved by the insurance commissioner, or otherwise violating any of the provisions of this act, shall be punished by a fine of not more than two hundred dollars (\$200.00) and/or six months imprisonment for each offense. (1937, c. 127, s. 125.)

§ 7880(57). Hotels.—Every person, firm, or corporation engaged in the operation of any hotel in this state shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

(a) For hotels operating on the American plan for rooms in which rates per person per day are:

Less than two dollars.....	\$.60
Two dollars and less than three dollars.....	.90
Three dollars and less than four dollars and fifty cents	1.80
Four dollars and fifty cents and less than six dollars	4.20

Six dollars and less than seven dollars and fifty cents	5.40
Seven dollars and fifty cents and less than fifteen dollars	6.00
Over fifteen dollars	7.20

(b) For hotels operating on the European plan for rooms in which the rates per person per day are:

Less than two dollars.....	\$1.25
Two dollars and less than three dollars.....	3.00
Three dollars and less than four dollars and fifty cents	4.50
Four dollars and fifty cents and less than six dollars	5.50
Six dollars and less than seven dollars and fifty cents	6.50
Seven dollars and fifty cents and less than ten dollars	7.50
Over ten dollars.....	8.50

(c) The office, dining-room, one parlor, kitchen and two other rooms shall not be counted when calculating the number of rooms in the hotel.

(d) Only one-half of the annual license tax levied in this section shall be levied or collected from resort hotels and boarding houses which are open for only six months or less in the year: Provided, that the minimum tax under any schedule in the section shall be five dollars (\$5.00).

(e) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the state. (1937, c. 127, s. 126.)

§ 7880(57)a. Tourist homes and tourist camps.

—(a) Every person, firm, or corporation engaged in the business of operating a tourist home, tourist camp, or similar place advertising in any manner for transient patronage, or soliciting such business, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business and shall pay the following tax:

Homes or camps having five rooms or less, ten dollars (\$10.00); homes or camps having more than five rooms, two dollars (\$2.00) per room. For the purpose of this section, the sitting-room, dining-room, kitchen, and rooms occupied by the owner or lessee of the premises, or members of his family, for his or their personal or private use, shall not be counted in determining the number of rooms for the basis of the tax. The tax herein levied shall be in addition to any tax levied in section 7880(58) for the sale of prepared food.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the state. (1937, c. 127, s. 126½.)

§ 7880(58). Restaurants.—Every person, firm, or corporation engaged in the business of operating a restaurant, cafe, cafeteria, hotel, with dining service on the European plan, drug store, or other place where prepared food is sold, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business. The tax for such license shall be based on the number of persons provided for with chairs, stools, or benches, and shall be one dollar

(\$1.00) per person, with a minimum tax of five dollars (\$5.00): Provided, that the tax levied in this paragraph shall not apply to industrial plants maintaining a non-profit restaurant, cafe or cafeteria solely for the convenience of its employees.

(a) All other stands or places where prepared food is sold as a business, and drug stores, service stations, and all other stands or places where prepared sandwiches only are served, shall pay a tax of five dollars (\$5.00).

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the state. (1937, c. 127, s. 127.)

§ 7880(59). Cotton compresses. — Every person, firm, or corporation engaged in the business of compressing cotton shall pay an annual license tax of three hundred dollars (\$300.00) on each and every compress.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 128.)

§ 7880(60). Billiard and pool tables, and bowling alleys.—Every person, firm, or corporation who shall rent, maintain, own a building wherein there is a table or tables at which billiards or pool is played, whether operated by slot or otherwise, shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such billiard or pool tables, and shall pay for such license a tax for each table as follows:

Tables measuring not more than 2 feet wide and 4 feet long	\$ 5.00
Tables measuring not more than 2½ feet wide and 5 feet long	10.00
Tables measuring not more than 3 feet wide and 6 feet long	15.00
Tables measuring not more than 3½ feet wide and 8 feet long	20.00
Tables measuring more than 3½ feet wide and 8 feet long	25.00

Every person, firm, or corporation who shall rent, maintain, own a building wherein there is a bowling alley or alleys of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such bowling alley or alleys, and shall pay for such license a tax of twelve and fifty one-hundredths dollars (\$12.50) for each alley kept or operated:

Provided, each such billiard or pool table so licensed shall receive a number and receipt from the commissioner of revenue when the license is issued, and it shall be the duty of each operator to attach said numbered license to said table or machine and shall display the same at all times. Failure to have such license and receipt on display attached to said machine or table shall be prima facie evidence that the tax has not been paid hereunder.

(a) This section shall not apply to fraternal organizations having a national charter, American Legion Posts, Young Men's Christian Associations, and Young Women's Christian Associations.

(b) The commissioner of revenue shall not issue a license under this section to any person,

firm, or corporation to maintain a billiard or pool table or bowling alley outside of the corporate limits of incorporated cities or towns, except with the approval of the board of county commissioners of the county for which the application is made, and all applications for such licenses are hereby required to be filed with such board of county commissioners at least seven days before being acted upon, and notice thereof published in some newspaper published in the county once a week for two weeks, or if no newspaper is published in such county, then posted at the courthouse door and three other public and conspicuous places in the community where the license is to be exercised for two weeks prior to the action of the board of county commissioners thereon.

(c) If the commissioner of revenue shall have issued any such state license to any person, firm, or corporation to operate any billiard or pool tables, bowling alley or alleys in any city or town, the board of aldermen or other governing body of such city or town shall have the right at any time, and notwithstanding the issuance of such state license, to prohibit any billiard or pool tables, bowling alley or alleys of like kind within its limits, unless otherwise provided in its charter; and in the event any city or town shall exercise the right to prohibit the keeping and operation of such billiard or pool tables, bowling alley or alleys of like kind, the commissioner of revenue shall refund the proportion of the tax thereof during the time which the right is not allowed to be exercised bears to the time for which the tax is paid.

(d) Counties may levy a license tax on the business taxed under this section upon such billiard or pool tables, bowling alleys as are located outside of incorporated cities or towns, and cities and towns may levy a license tax upon such as are within the city limits, but in neither case shall the license tax so levied be in excess of the tax levied by the state. (1937, c. 127, s. 129.)

§ 7880(60)a. Merchandising or vending machines.—Every person, firm, or corporation owning or maintaining any place of business or other place wherein or in connection with which is operated or located any machine in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise, shall apply for and procure from the commissioner of revenue for the privilege of operating any and every such machine, and shall pay for such license the following tax:

Any such machine, except as hereinafter provided, that requires a deposit of five cents or less.....	\$10.00
Five cents and less than ten cents.....	20.00
Ten cents and not more than twenty cents..	40.00
More than twenty cents.....	80.00

(a) Drinking-cup machines, and machines vending food, including candy, peanuts and other food products or chewing gum, which do not require the deposit of a coin in excess of five cents (5c) shall not be subject to the foregoing schedule, and shall not be subject to any license tax per machine: Provided, however, any person, firm, or corporation engaged in the business of operating such machines shall pay an annual operator's license tax of one hundred dollars (\$100.00). The

applicant for such operator's license tax shall furnish to the commissioner a list of such machines and information concerning the food, merchandise or service rendered in connection with the operation thereof, together with such other information in connection therewith as shall be required by the commissioner. Such operator's license tax shall be in lieu of any license tax per machine on the vending or service machines referred to in this classification, and such operator's license tax shall be levied and collected only by the commissioner of revenue of the state. Weighing machines requiring a deposit of one cent shall pay a tax of two dollars and fifty cents (\$2.50).

(b) This section shall not apply to any machine not delivering merchandise of the value of the coin deposited: Provided, however, that it shall apply to weighing machines where a deposit of five cents (5c) or more is required, and to machines wherein may be seen any picture and requires a deposit of not less than five cents (5c), which said weighing machines or picture machines shall be subject to the foregoing schedule of license taxes; and provided further, that this section shall apply to machines wherein or in connection with the operation of which may be heard any music by depositing therein any coin or thing of value, which said music machines, however, shall be subject to an annual license tax of ten dollars (\$10.00) for each of such machines requiring a deposit of less than five cents (5c); ten dollars (\$10.00) for each of such machines requiring a deposit of five cents (5c) and less than ten cents (10c), and forty dollars (\$40.00) for each of such machines requiring a deposit of ten cents (10c) and not more than twenty cents (20c); eighty dollars (\$80.00) for each of such machines requiring a deposit of more than twenty cents (20c).

(c) Where machines taxable under this section are so constructed as to be capable of receiving multiple deposits at one time, or to permit the insertion of more than one coin at one time, to produce a series of operations, then the maximum number of deposits which said machine is capable of so receiving shall be the basis on which the license tax on such machine shall be determined under the schedule herein provided.

(d) None of the taxes provided in this section shall apply to any machine in the operation of which is involved any element of skill or chance or in connection with the operation of which there is given or allowed any premium, prize, coupon, reward, chance, refund or rebate.

(e) This section shall not apply to any automatic locker used as a depository for parcels, clothing or luggage, nor to vending or merchandising machines owned and operated by any retail merchant in his own place of business for delivering merchandise of the market value of the coin deposited, unless trade checks or tokens, whether or not redeemable or of any value, are given in addition to merchandise, in which event the tax herein provided shall apply; nor shall it apply to slot machines from which drinking cups are delivered at not more than one cent (1c) per cup, nor to penny food or chewing gum vending machines, nor to any penny weighing machines, which said penny drinking cup, weighing and food or chewing gum vending machines shall be exempt from license taxes.

(f) In making application for license under this section the applicant shall specify the manufacturer's serial number of the machine for which license is desired, together with a description of the machine, the merchandise offered for sale thereby and the amount of deposit required by or in connection with the operation of such machine. Each license shall carry the serial number and a description of the merchandise sold by said machine to correspond with that on the application. No such license shall be transferable to any other machine. It shall be the duty of the person in whose place of business the machine is located to see that the proper state license is attached to the machine before its operation commences. Failure to do so shall make such person liable for the additional tax imposed under section 7880(107).

(g) If any person, firm, or corporation shall fail, neglect or refuse to comply with the terms and provisions of this section and shall fail to attach the proper state license to any machine or apparatus as herein provided, the commissioner of revenue, or his agents or deputies shall forthwith seize and remove, or order removed any such machine or machines, and shall hold the same until the provisions of this section shall have been complied with.

(h) Nothing in this section shall be construed to relieve the owner of any such machine or apparatus of liability for the tax herein imposed.

(i) Sales of merchandise in the merchandising or vending machines herein referred to shall be subject to the provisions of Article V, Schedule E, of this act [§ 7880(156)a et seq.].

(j) Counties may levy a license tax on the business taxed in this section upon such machines, and cities or towns may levy a tax on such machines within their limits, but in neither case shall the tax so levied exceed one-half the tax levied by the state. (1937, c. 127, s. 130, c. 249, s. 2.)

§ 7880(61). Slot machines and slot locks. —

Every person, firm, or corporation owning, operating, or maintaining any place of business or other place wherein, or in connection with which, is operated or located any machine operated by a slot wherein is deposited any coin or thing of value, except those enumerated in sections 7880(60) and 7880(60)a and toilet locks and telephone slot machine shall apply for and procure from the commissioner of revenue a state-wide license for the privilege of operating each and every such machine, and shall pay for such license the following tax:

Any such machine, except as hereinafter provided, that requires a deposit of less than five cents.....	\$ 25.00
Five cents and less than ten cents.....	50.00
Ten cents and not more than twenty cents..	100.00
More than twenty cents.....	150.00

Provided further, that any such machine mentioned in this section giving or equipped to give trade checks, tokens, or similar articles or devices, whether redeemable or having any value or not, or whether given in addition to merchandise or not, shall require payment as in the above schedule, except the minimum tax on any such machine shall be twenty-five dollars (\$25.00): Provided further, that the tax on checker-board devices operated by slot machines and requiring

deposits of not more than five cents (5c) shall be five dollars (\$5.00).

(a) No machine shall be licensed under this section unless said machine shall bear a permanently attached identifying serial number, and in making application for license under this section, the applicant shall specify the manufacturer's serial number of the machine for which license is desired. The license shall carry the serial number to correspond with that on the application, and no such license shall be transferable to any other machine. It shall be the duty of the person in whose place of business the machine is operated or located to see that the proper state license is attached to the bottom of the machine before its operation shall commence. Failure to do so shall make such person liable for the additional tax imposed in section 7880(107).

(b) Upon application being made for a license to operate any machine or apparatus under this section, the commissioner of revenue is hereby authorized to presume that the operation of such machine or apparatus is lawful, and when a state license has been issued for the operation thereof, the sum paid for such state license shall not be refunded, notwithstanding that the operation of such machine or apparatus shall afterwards be prohibited: Provided further, that it shall be within the discretion of the commissioner of revenue as to whether he shall issue any duplicate license under this section when it is represented to him that the original license has been lost, misplaced, destroyed, or otherwise left the possession of the licensee.

(c) If any person, firm, or corporation shall fail, neglect, or refuse to comply with the terms and provisions of this section, and shall fail to attach the proper state license to any machine or apparatus as herein provided, the commissioner of revenue, or his agents or deputies, shall forthwith seize and remove, or order removed, such machine or machines, and the commissioner of revenue or his agents or deputies are hereby empowered and authorized to seize, confiscate, and destroy all such machines.

(d) Nothing in this section shall be construed to relieve the owner of any such machine or apparatus of liability for the tax.

(e) For the purpose of determining the amount of license tax payable hereunder on machines designed to use coins of different denominations, the coin of maximum denomination which may be deposited in any machine shall be the base upon which the license tax shall be levied and collected.

(f) Counties may levy a license tax on the business taxed in this section upon slot machines, and cities or towns may levy a tax on such machines within their limits: Provided, that any county, city or town may levy a tax in an amount not greater than that which may be levied by the state herein; and provided further, that no county, city or town shall issue a license hereunder until the applicant for same shall exhibit the license required by the state hereunder. (1937, c. 127, s. 130½.)

§ 7880(62). Bagatelle tables, merry-go-rounds, etc.—(a) Every person, firm, or corporation that is engaged in the operation of a bagatelle table, merry-go-round or other riding devices, hobby-

horse, switchback railway, shooting gallery, swimming pool, skating rink, other amusement devices of a like kind, or a place for other games or play with or without name (unless used solely and exclusively for private amusement or exercise), at a permanent location, shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such objects of amusement, and shall pay for each such subject enumerated the following tax:

In cities or towns or less than 10,000 population	\$ 10.00
In cities or towns of 10,000 population and over	25.00

(b) Counties, cities or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 131.)

§ 7880(63). Security dealers.—(a) Every person, firm, or corporation who or which is engaged in the business of dealing in securities as defined in "An act to provide laws governing the sale of stocks, bonds, and other securities in the state of North Carolina," etc., or who or which maintains a place for or engaged in the business of buying and/or selling shares of stock in any corporation, bonds, or any other securities on commission or brokerage, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

In cities or towns of less than 5,000 population	\$ 25.00
In cities or towns of 5,000 and less than 10,000 population	50.00
In cities or towns of 10,000 and less than 15,000 population	100.00
In cities or towns of 15,000 population and less than 25,000	200.00
In cities or towns of 25,000 population and above	300.00

(b) Every dealer, as defined herein, who shall maintain in the state of North Carolina more than one office for dealing in securities, as hereinbefore defined, shall apply for and procure from the commissioner of revenue a license for the privilege of transacting such business at each such office, and shall pay for such license the same tax as hereinbefore fixed.

(c) Every foreign dealer, as dealer is hereinbefore defined, who shall maintain an office in this state, or have a salesman in this state, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the tax hereinbefore imposed.

(d) If such person, firm, or corporation described in subsection (a) of this section maintains and/or operates a leased or private wire and/or ticker service in connection with such business the annual license tax shall be as follows:

In cities and towns of less than 10,000 population	\$ 150.00
In cities and towns of 10,000 and less than 15,000 population	250.00
In cities and towns of 15,000 and less than 20,000 population	500.00

In cities and towns of 20,000 to 25,000 population 750.00
In cities and towns of 25,000 or more.... 1,000.00
Providing, that the tax levied in sub-section (d) shall not apply to private wire service not connected with or handling quotations of a stock exchange, grain or cotton exchange.

(e) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy license tax not in excess of fifty dollars (\$50.00). (1937, c. 127, s. 132.)

§ 7880(64). Cotton buyers and sellers on commission.—(1) Every person, firm, or corporation who or which engages in the business and/or selling on commission any cotton, grain, provisions, or other commodities, either for actual, spot, or instant delivery, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business in this state, and shall pay for such license a tax of fifty dollars (\$50.00).

(2) Every person, firm, or corporation who or which engages in the business of buying or selling any cotton, grain, provisions, or other commodities, either for actual, spot, instant or future delivery, and also maintains and/or operates a private or leased wire and/or ticker service in connection with such business, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business in this state and shall pay for such license the following tax:

In cities and towns of less than 10,000 population	\$ 100.00
In cities and towns of 10,000 and less than 15,000 population	200.00
In cities and towns of 15,000 and less than 25,000 population	400.00
In cities and towns of 25,000 population or more	600.00

Persons, firms, and corporations who pay the tax imposed in subsection (d) of section 7880(63) shall not be required to pay the tax imposed in this sub-section.

(3) Every person, firm, or corporation, domestic or foreign, who or which is engaged in the business of selling any cotton, either for actual, spot, instant, or future delivery, in excess of five thousand bales per annum, shall be deemed to be a cotton merchant, shall apply for and obtain from the commissioner of revenue a state-wide license for each office or agency maintained in this state for the sale of cotton and shall pay for each such license the following tax:

In cities and towns of less than 10,000 population	\$ 50.00
In cities and towns of 10,000 and less than 15,000 population	100.00
In cities and towns of 15,000 and less than 25,000 population	200.00
In cities and towns of 25,000 population and over	300.00

(4) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars (\$50.00). (1937, c. 127, s. 133.)

and distributors of soft drinks.—(a) Every person, firm, or corporation or association manufacturing, producing, bottling and/or distributing in bottles, or other closed containers, soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices or imitations thereof, carbonated or malted beverages and like preparations, or preparations of any nature whatever commonly known as soft drinks, shall apply for and obtain from the commissioner of revenue a state license for the privilege of doing business in this state, and shall pay for such license the following base tax for each place of business:

Low-Pressure Equipment

Where the machine or the equipment unit used in the manufacture of the above named beverage is a:

36 spouts, or greater capacity, low-pressure filler	\$ 600.00
32 and less than 36 spouts, low-pressure filler	500.00
24 and less than 32 spouts, low-pressure filler	450.00
18 and less than 24 spouts, low-pressure filler	350.00
12 and less than 18 spouts, low-pressure filler	250.00

High-Pressure Equipment

Where the machine or the equipment unit used in the manufacture of the above mentioned beverages is a Royal (8-head), Shields (6-head), Adriance (6-head), or other high-pressure equipment having manufacturer's rating capacity of over sixty bottles per minute, six hundred dollars (\$600.00).

Royal (4-head), Adriance (2-head), Shields (2-head), full equipment having manufacturer's rating capacity of over fifty and less than sixty bottles per minute, five hundred dollars (\$500.00).

Royal (4-head), Adriance (2-head), Shields (2-head) (full automatic), or other high-pressure equipment having manufacturer's rating capacity of more than forty and less than fifty bottles per minute, four hundred fifty dollars (\$450.00).

Dixie (automatic), Shields (2-head hand feed), Adriance (1-head), Calleson (1-head), Senior (high-pressure), Junior (high-pressure), or Burns or other high-pressure equipment having manufacturer's rating capacity of more than twenty-four bottles and less than forty bottles per minute, one hundred fifty dollars (\$150.00).

Single-head Shields, Modern Bond (power), Baltimore (semi-automatic), and all other machines or equipment having manufacturer's rating capacity of less than twenty-four bottles per minute and all foot-power bottling machines, one hundred dollars (\$100.00):

Provided, that any bottling machine or equipment unit not herein specifically mentioned shall bear the same tax as a bottling machine or equipment unit of the nearest rated capacity as herein enumerated: Provided further, that where any person, firm, corporation, or association has within his or its bottling plant or place of manufacture more than one bottling machine or equipment unit, then such person, firm, corporation, or association shall pay the tax as herein specified upon every such bottling machine or equipment unit whether

in actual operation or not: Provided further, that where no standard high or low-pressure bottling machine is used to fill the containers, a tax of fifty dollars (\$50.00) shall apply. The tax levied in this section shall not apply to any product containing more than fifty per cent (50%) of milk, put up in containers for sale as food rather than soft drink preparations.

(b) Every person, corporation, or association distributing, selling at wholesale, or jobbing bottled beverages as enumerated in sub-section (a) of this section shall pay an annual license tax for the privilege of doing business in this state, as follows:

In cities or towns of 30,000 inhabitants or more	\$ 100.00
In cities or towns of 20,000 inhabitants and less than 30,000 inhabitants.....	90.00
In cities or towns of 10,000 inhabitants and less than 20,000 inhabitants.....	80.00
In cities or towns of 5,000 inhabitants and less than 10,000 inhabitants.....	70.00
In cities or towns of 2,500 inhabitants and less than 5,000 inhabitants.....	60.00
In rural districts and towns of less than 2,500 inhabitants	50.00

The tax levied in this sub-section shall not include the right to sell products authorized to be sold under sections 3411(92)-3411(120).

(c) Every distributing warehouse selling or supplying to retail stores cereal or carbonated beverages manufactured or bottled within the state, but outside of the county in which such cereal or carbonated beverages are manufactured or bottled, shall pay one-half of the annual license tax for the privilege of doing business in this state provided for in sub-section (b) of this section.

(d) Every distributing warehouse selling or supplying to retail stores cereal or carbonated beverages on which the tax has not been paid under the provisions of sub-section (a) of this section shall pay the annual license tax for the privilege of doing business in the state provided in sub-section (b) of this section.

(e) Each truck, automobile, or other vehicle coming into this state from another state, and selling and/or delivering carbonated beverages on which the tax has not been paid under the provisions of sub-section (a) of this section, shall pay an annual license tax for the privilege of doing business in this state, in the sum of one hundred dollars (\$100.00) per truck, automobile, or vehicle. The license secured from the state under this section shall be posted in the cab of the truck, automobile, or vehicle.

(f) No county shall levy a tax on any business taxed under the provisions of this section, nor shall any city or town in which any person, firm, corporation, or association taxed hereunder has its principal place of business levy and collect more than one-fourth of the state tax levied under this section; nor shall any tax be levied or collected by any county, city, or town on account of the delivery of the products, beverages, or articles enumerated in sub-section (a) or (b) or (c) or (d) of this section when a tax has been paid under any of those sub-sections. (1937, c. 127, s. 134.)

§ 7880(66). Packing houses. — Every person, firm, or corporation engaged in or operating a

meat packing house in this state, and every wholesale dealer in meat packing-house products who owns, leases, or rents and operates a cold-storage room or warehouse in connection with such wholesale business, shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business in this state, and shall pay for such license the sum of one hundred dollars (\$100.00) for each county in which is located such a packing house or a cold-storage room or warehouse. Every person, firm, or corporation maintaining a cold-storage room or warehouse and distributing such products to other stores owned in whole or in part by the distributor for sale at retail shall be deemed a wholesale dealer or distributor in the meaning of this act. Counties shall not levy any tax on business taxed under this section. (1937, c. 127, s. 135.)

§ 7880(67). Newspaper contests. — Every person, firm, or corporation that conducts contests and offers a prize, prizes, or other compensation to obtain subscriptions to newspapers, magazines, or other periodicals in this state shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such contests, and shall pay for such license the following tax for each such contest:

Monthly, weekly, semi-weekly newspaper, magazine or other periodical.....	\$ 50.00
Daily newspaper or other daily periodical..	200.00

Counties, cities and towns may levy a tax not to exceed one-half of that levied by the state under the provisions of this act. (1937, c. 127, s. 136.)

§ 7880(68). Persons, firms, or corporations selling certain oils.—(a) Every person, firm, or corporation engaged in the business of selling illuminating or lubricating oil or greases, or benzine, naphtha, gasoline, or other products of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for the same a tax of two dollars and fifty cents (\$2.50).

(b) In addition to the tax herein levied under subsection (a) of this section, such person, firm, or corporation shall pay to the commissioner of revenue, on or before the first day of July of each year, an annual additional license tax equal to five per cent (5%) of the total gross sales for the preceding year or part of the year that the business is so conducted or the privilege so exercised, when the total gross sales of such commodities exceed five thousand dollars (\$5,000.00), or pro rata for a part of the year.

(c) The amount of such total gross sales shall be returned to the commissioner of revenue on or before the date specified in subsection (b) of this section by such person, firm, or corporation, verified by the oath of the person making the return, upon such forms and in such detail as may be required by the commissioner of revenue.

(d) Counties shall not levy any license tax on the business taxed under this section; but cities or towns in which there is located an agency, station, or warehouse for the distribution or sale of such commodities enumerated in this section may levy the following license tax:

In incorporated towns and cities of less than 10,000 population	\$25.00
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In cities and towns of 10,000 population and over 50.00

(e) Any person, firm, or corporation subject to this license tax, and doing business in this state without having paid such license tax, shall be fined one thousand dollars (\$1,000.00), and in addition thereto double the tax imposed by this section.

(f) No license or privilege tax, other than the license tax permitted in this section to cities or towns, shall be levied or collected for the privilege of engaging in or doing the business named in this section from any person, firm, or corporation paying the inspection fees and charges provided for under article fourteen of chapter eighty-four of the Consolidated Statutes of one thousand nine hundred nineteen and the amendments thereto, except license taxes levied in sections 7880(84) and 7880(93)b. (1937, c. 127, s. 137.)

§ 7880(69). Building and loan associations. —

Every building and loan association, domestic or foreign, operating under a charter granted by authority of the laws of this state or any other state, or the United States, for the purpose of making loans to its members only and of enabling its members to acquire real estate, make improvements thereon, and remove encumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, shall pay to the insurance commissioner, on or before the first day of April of each year, the following annual license tax for the privilege of doing business in the state:

(a) A tax of thirteen cents (13c) on each one hundred dollars (\$100.00) of liability on actual book value of shares of stock outstanding on the thirty-first day of December of the preceding year, as shown by reports of such association to be made to the insurance commissioner. The tax levied herein shall be in addition to the license fee required under section five thousand one hundred eighty-six, Consolidated Statutes, and expenses and cost of examination required under section five thousand one hundred ninety, Consolidated Statutes.

(b) Counties, cities, and towns shall not levy any license tax on the business taxed in this section. (1937, c. 127, s. 138.)

§ 7880(70). Pressing clubs, dry cleaning plants, and hat blockers.—Every person, firm, or corporation engaged in the business of pressing and/or dry cleaning any articles of clothing, reshaping, cleaning, and/or reblocking any hats shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business and pay for the same the following tax:

In cities or towns of less than 10,000 population:
Where not more than three persons are employed\$12.50
Where more than three persons are employed 25.00

In cities and towns of 10,000 population and over:

Where not more than three persons are employed\$25.00
Where more than three persons are employed 50.00

Every person, firm, or corporation soliciting pressing and/or cleaning work in any city or town to be done outside of the city wherein said pressing and/or cleaning business is established, and in another city or town where one or more pressing clubs or dry cleaning plants are located, or where an established agency with a fixed place of business is located, shall procure from the commissioner of revenue a state license for the privilege of soliciting in said city or town. The soliciting of business for or by any person, firm, or corporation engaged in the pressing and/or cleaning work shall and the same is hereby construed to be engaging in said business, and the person, firm, or corporation soliciting in said city or town shall procure from the revenue commissioner a state license for the privilege of soliciting in said city and town, said tax to be in a sum equal to the amount which would be paid by such establishments actually engaged in such business in said city or town.

(a) This section shall not apply to any bona fide student of any college or university in this state operating such pressing or dry cleaning business at such college or university during the school term of such college or university.

(b) Cities and towns, respectively, may levy a license tax not in excess of that levied by the state.

In addition to the annual tax levied in this section, it is hereby required, with respect to every such concern herein referred to, that with each delivery of articles of clothing or other articles herein referred to and cleaned or otherwise processed as herein referred to there shall be issued a charge ticket, to each of which tickets there shall be affixed a service stamp tax of one cent (1c) on all packages on which the charge is one dollar (\$1.00) or less, and for packages of more than one dollar (\$1.00), one cent (1c) for each dollar or fraction thereof, the amount of such tax to be added to such charge ticket and to be paid for by the customer. The stamps for such purpose are to be made available by the commissioner of revenue and by him sold to pressing and/or cleaning concerns at par and for cash only, as the same may be needed by the pressing and/or cleaning concerns of the state in order to meet the requirements of this act. It shall be unlawful for any person, firm, or corporation engaged in such business to make any delivery except in compliance with this section, and the violation of any of the provisions hereof is hereby declared to be a misdemeanor. (1937, c. 127, s. 139.)

§ 7880(71). Barber shops.—Every person, firm, or corporation engaged in the business of conducting a barber shop, beauty shop or parlor, or other shop of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

For each barber chair maintained in a barber shop\$2.50
For each barber, manicurist, cosmetologist, beautician, or operator in beauty parlor, or other shop of like kind in any office, hotel, or other place 5.00
Counties shall not levy a license tax under this

section, but cities and towns may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 140.)

§ 7880(72). Shoeshine parlors.—Every person, firm, or corporation who or which maintains or operates a place of business wherein is operated a shoeshine parlor, stand, or chair or other device shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business and shall pay for such license the following tax:

Where the number of chairs or stools are not more than two	\$ 5.00
Where the number of chairs or stools are more than two and less than six	10.00
Where the number of chairs or stools are six and less than ten	20.00
Where the number of chairs or stools are ten or more	30.00

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 141.)

§ 7880(73). Tobacco warehouses. — Every person, firm, or corporation engaged in the business of operating a warehouse for the sale of leaf tobacco upon commission shall, on or before the first day of June of each year, apply for and obtain from the commissioner of revenue a state license for the privilege of operating such warehouse for the next ensuing year, and shall pay for such license the following tax:

For a warehouse in which was sold during the preceding year ending the first day of June:

Less than 1,000,000 pounds.....	\$ 50.00
1,000,000 pounds and less than 2,000,000....	75.00
2,000,000 pounds and less than 3,000,000....	175.00
3,000,000 pounds and less than 4,000,000....	250.00
4,000,000 pounds and less than 5,000,000....	400.00
5,000,000 pounds and less than 6,000,000....	500.00

For all in excess of 6,000,000 pounds, \$500.00 and six cents per thousand pounds.

(a) If a new warehouse not in operation the previous year, the person, firm, or corporation operating such warehouse may procure a license by payment of the minimum tax provided in the foregoing schedule, and at the close of the season for sales of tobacco in such warehouse shall furnish the commissioner of revenue a statement of the number of pounds of tobacco sold in such warehouse for the current year, and shall pay an additional license tax for the current year based on such total volume of sales in accordance with the schedule in this section.

If an old warehouse with new or changed ownership or management, the tax shall be paid according to the schedule in this section, based on the sales during the preceding year, just as if the old ownership or management had continued its operation.

(b) The commissioner of agriculture shall certify to the commissioner of revenue, on or before the first day of June of each year, the name of each person, firm, or corporation operating a tobacco warehouse in each county in the state, together with the number of pounds of leaf tobacco sold by such person, firm, or corporation in each

warehouse for the preceding year, ending on the first day of June of the current year.

(c) The commissioner of agriculture shall report to the solicitor of any judicial district in which a tobacco warehouse is located which the owner or operator thereof shall have failed to make a report of the leaf tobacco sold in such warehouse during the preceding year, ending the first day of June of the current year, and such solicitor shall prosecute any such person, firm, or corporation under the provisions of this section.

(d) The tax levied in this section shall be based on official reports of each tobacco warehouse to the state department of agriculture showing amount of sales for each warehouse for the previous year.

(e) The commissioner of revenue or his deputies shall have the right, and are hereby authorized, to examine the books and records of any person, firm, or corporation operating such warehouse, for the purpose of verifying the reports made and of ascertaining the number of pounds of leaf tobacco sold during the preceding year, or other years, in such warehouse.

(f) Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties provided for in this act, be guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars (\$500.00) and/or imprisoned, in the discretion of the court.

(g) No county shall levy any license tax on the business taxed under this section. Cities and towns may levy a tax not in excess of fifty dollars (\$50.00) for each warehouse. (1937, c. 127, s. 142.)

Cited in *State v. Morrison*, 210 N. C. 117, 185 S. E. 674.

§ 7880(75). Newsdealers on trains.—Every person, firm, or corporation engaged in the business of selling books, magazines, papers, fruits, confections, or other articles of merchandise on railroad trains or other common carriers in this state shall apply for and obtain a state license from the commissioner of revenue for the privilege of conducting such business, and shall pay for such license the following tax:

Where such person, firm, or corporation operates on railroads or other common carriers on:

Less than 300 miles.....	\$ 250.00
Three hundred and less than 500 miles...	500.00
Five hundred miles or more.....	1,000.00

This section shall not apply to any railroad company engaged in selling such articles to passengers on its train and paying the tax upon the retail sales of merchandise levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.].

Counties, cities, and towns shall not levy any license tax on the business taxed under this section. (1937, c. 127, s. 143.)

§ 7880(76). Soda fountains, soft-drink stands.—Every person, firm, or corporation engaged in the business of operating a soda fountain or soft-drink stand shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

On each carbonated draft arm of each soda fountain a tax of \$10.00.

On each stand at which soft drinks are sold, the same not being strictly a soda fountain, and on each place of business where bottled carbonated drinks are sold at retail, the license tax shall be five dollars (\$5.00).

In addition to the license tax levied in this section, the tax shall be paid upon the gross sales at the rate of tax levied in Article V, Schedule E, of this act [§ 7880(156)a et seq.], upon the retail sales of merchandise, such tax to be paid at the time and in the manner required for the sales of other merchandise.

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the state. (1937, c. 127, s. 144.)

§ 7880(77). Dealers in pistols, etc.—Every person, firm, or corporation who is engaged in the business of keeping in stock, selling, and/or offering for sale any of the articles or commodities enumerated in this section, shall apply for and obtain a state license from the commissioner of revenue for the privilege of conducting such business, and shall pay for such license the following tax:

For pistols	\$ 50.00
For bowie knives, dirks, daggers, slingshots, leaded canes, iron or metallic knuckles, or articles of like kind	200.00
For blank cartridge pistols	200.00

(a) If such person, firm, or corporation deal only in metallic cartridges, the tax shall be ten dollars (\$10.00).

(b) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 145.)

§ 7880(78). Dealers in cap pistols, fireworks, etc.—Every person, firm, or corporation engaged in the business of selling or offering for sale firecrackers, fireworks, or other articles of like kind, cap pistols, or pistols so constructed that they can by treatment to release the hammer to be used to fire caps, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for the same a tax of one hundred dollars (\$100.00).

Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of twice that levied by the state. (1937, c. 127, s. 146.)

§ 7880(79). Pianos, organs, victrolas, records, radios, accessories.—Every person, firm, or corporation engaged in the business of selling, offering or ordering for sale any of the articles hereinafter enumerated in this section shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for each license the following tax:

For pianos and/or organs, graphophones, victrolas, or other instruments using discs or cylinder records, and/or the sale of records for either or all of these instruments, radios or radio accessories, an annual license tax of ten dollars (\$10.00).

(a) Any person, firm, or corporation applying

for and obtaining a license under this section may employ traveling representative or agents, but such traveling agent or representatives shall obtain from the commissioner of revenue a duplicate license of such person, firm, or corporation who or which he represents, and pay for the same a tax of ten dollars (\$10.00).

Each duplicate copy so issued is to contain the name of the agent to whom it is issued, the instrument to be sold, and the same shall not be transferable.

Representatives or agents holding such duplicate copy of such license are licensed thereby to sell or offer for sale only the instrument and/or articles authorized to be sold by the person, firm, or corporation holding the original license, and such license shall be good and valid in any county in the state.

(b) Every person, firm, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and shall pay a penalty of two hundred and fifty dollars (\$250.00), and in addition thereto double the state license tax levied in this section for the then current year.

(c) Counties shall not levy any license tax on the business taxed under this section, except that the county in which the agent or representative holding a duplicate copy of the license aforesaid may impose a license tax not in excess of five dollars (\$5.00). Cities or towns may levy a license tax on the business taxed under this section not in excess of one-half of that levied by the state. (1937, c. 127, s. 147.)

§ 7880(80). Installment paper dealers. — (a) Every person, firm, or corporation, foreign or domestic, engaged in the business of dealing in, buying, and/or discounting installment paper, notes, bonds, contracts, evidences of debt and/or other securities, where lien is reserved or taken upon personal property located in this state to secure the payment of such obligations, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business or for the purchasing of such obligations in this state, and shall pay for such license an annual tax of one hundred dollars (\$100.00).

(b) In addition to the tax levied in subsection (a) of this section, such person, firm, or corporation shall submit to the revenue commissioner quarterly on the first day of January, April, July, and October of each year, upon forms prescribed by the said commissioner, a full, accurate, and complete statement, verified by the officer, agent, or person making such statement, of the total face value of the installment paper, notes, bonds, contracts, evidences of debt, and/or other securities described in this section dealt in, bought and/or discounted within the preceding three months and, at the same time, shall pay a tax of one-fourth of one per cent of the face value of such obligations dealt in, bought and/or discounted for such period.

(c) If any person, firm, or corporation, foreign or domestic, shall deal in, buy and/or discount any such paper, notes, bonds, contracts, evidences of debt and/or other securities described in this section without applying for and obtaining a license for the privilege of engaging in such business or dealing in such obligations, or shall fail,

refuse, or neglect to pay the taxes levied in this section, such obligation shall not be recoverable or the collection thereof enforceable at law or by suit in equity in any of the courts of this state until and when the license taxes prescribed in this section have been paid, together with any and all penalties prescribed in this act for the non-payment of taxes.

(d) This section shall not apply to corporations organized under the state or national banking laws.

(e) Counties, cities and towns shall not levy any license tax on the business taxed under this section. (1937, c. 127, s. 148.)

§ 7880(81). Tobacco and cigarette retailers and jobbers.—Every person, firm, or corporation engaged in the business of retailing and/or jobbing cigarettes, cigars, chewing tobacco, snuff, or any other tobacco products shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax:

Outside of incorporated cities or towns and cities or towns of less than 1,000 population	\$ 5.00
Cities or towns of 1,000 population and over	10.00

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 149.)

§ 7880(82). Laundries.—Every person, firm, or corporation engaged in the business of operating a laundry, including a wet or damp wash laundries, where steam, electricity, or other power is used, or who engages in the business of supplying or renting clean linen or towels, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax:

In cities or towns of less than 5,000 population	\$ 12.50
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 15,000 population	37.50
In cities or towns of 15,000 and less than 20,000 population	50.00
In cities or towns of 20,000 and less than 25,000 population	60.00
In cities or towns of 25,000 and less than 30,000 population	72.50
In cities or towns of 30,000 and less than 35,000 population	85.00
In cities or towns of 35,000 and less than 40,000 population	100.00
In cities or towns of 40,000 and less than 45,000 population	112.50
In cities or towns of 45,000 population and above	125.00

Provided, however, that any laundry or other concern herein referred to where the work is performed exclusively by hand or home-size machines only, and where not more than four persons are employed, including the owners, the license tax shall be one-third of the amount stipulated in the foregoing schedule.

Every person, firm, or corporation soliciting laundry work, or supplying or renting clean linen or towels, in any city or town, to be done outside of the city wherein said laundry or linen supply or towel supply business is established, shall procure from the commissioner of revenue a state license for the privilege of soliciting in said city or town. The additional tax levied in this paragraph shall apply to the soliciting of laundry work only in cities or towns where one or more laundries are located, or where an established agency with a fixed place of business is located.

The soliciting of business for or by any person, firm, or corporation engaged in the business of laundry work, and/or supplying or renting clean linen or towels shall and the same is hereby construed to be engaging in said business, and the person, firm, or corporation soliciting in said city or town shall procure from the revenue commissioner a state license for the privilege of soliciting in said city or town, said tax to be in a sum equal to the amount which would be paid if the solicitor had an establishment actually engaged in such business in said city or town.

Counties, cities and towns, respectively, may levy a license tax not in excess of one-half that levied by the state on any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linens or towels in instances when said work is performed outside the said county or town, or when the linen or towels are supplied by a business outside said county or town.

In addition to the annual tax levied in this section, it is hereby required with respect to every laundry, including wet or damp wash laundries, where steam, electricity, or other power is used, or who engages in the business of supplying or renting clean linen or towels, that with each delivery of laundry for which there is a charge made there shall be issued a charge ticket, to each of which tickets there shall be affixed a service stamp tax of one cent on all packages on which the charge is one dollar or less, and for packages of more than one dollar, one cent for each dollar or fraction thereof, the amount of such tax to be added to such charge ticket and to be paid for by the customer. The stamps for such purpose are to be made available by the commissioner of revenue and by him sold to said laundries at par and for cash only, as the same may be needed by the laundries of the state in order to meet the requirements of this act. It shall be unlawful for any person, firm, or corporation engaged in such business to make any delivery except in compliance with this section, and the violation of any of the provisions is hereby declared to be a misdemeanor. (1937, c. 127, s. 150.)

§ 7880(83). Outdoor advertising. — (a) Every person, firm, or corporation who or which is engaged in the business of outdoor advertising by placing, erecting, or maintaining one or more outdoor advertising signs or structures of any nature by means of signboards, poster boards, or printed bulletins, or other printed or painted matter, or any other outdoor advertising devices, erected upon the grounds, walls, or roofs of buildings, shall apply for and obtain from the commissioner of revenue a state license for the privilege of en-

gaging in such business in this state, and shall pay annually for said license as follows:

For posting or erecting 50 or more signs or panels.....	\$100.00
For posting or erecting 20 to 50 signs or panels.....	50.00
For posting or erecting less than 20 signs or panels, one dollar for each sign or panel.	

And in addition thereto the following license tax for each city, town, or other place in which such signboards, poster boards, painted bulletins, and other painted or printed matter or other outdoor advertising devices are maintained, in cities and towns of:

Less than 500 population.....	\$ 5.00
500 to 999 population.....	7.50
1,000 to 1,999 population.....	10.00
2,000 to 2,999 population.....	15.00
3,000 to 3,999 population.....	20.00
4,000 to 4,999 population.....	25.00
5,000 to 9,999 population.....	40.00
10,000 to 14,999 population.....	50.00
15,000 to 19,999 population.....	75.00
20,000 to 24,999 population.....	100.00
25,000 to 34,999 population.....	125.00
35,000 population and over.....	150.00
In each county outside of cities and towns	25.00

Provided, that the tax levied in this act shall not apply to regularly licensed motion picture theatres taxed under section 7880(34) upon any advertising signs, structures, boards, bulletins, or other devices erected by or placed by the theatre upon property which the theatre has secured by permission of the owner.

Every person, firm, or corporation who or which places, erects, or maintains one or more outdoor advertising signs, structures, boards, bulletins, or devices as specified in this section shall be deemed to be engaged in the business of outdoor advertising, but when the applicant intends to advertise his own business exclusively by the erection or placement of such outdoor advertising signs, structures, boards, bulletins, or devices as specified in this section, he may be licensed to do so upon the payment annually of one dollar (\$1.00) for each sign up to five hundred in number, and for five hundred or more, the sum of five hundred dollars (\$500.00) for the privilege in lieu of all other taxation as provided in this section, except such further taxation as may be imposed upon him by cities or towns, acting under the power to levy not in excess of one-half of that specified in paragraph two of sub-section (a) of this section.

(b) Every person, firm, or corporation shall show in its application for the state license herein provided for the name of each incorporated city or town within which, and the county within which, it is maintaining or proposes to maintain said signboards, poster boards, painted bulletins, or other painted or printed signs or other outdoor advertising devices within the state of North Carolina. No person, firm, or corporation, licensed under the provisions of this act, shall erect or maintain any outdoor advertising structures, device or display until a permit for the erection of such structures, device or display shall have been obtained from the commissioner of revenue. Application for such permit shall be in writing signed

by the applicant or his duly authorized agent, upon blanks furnished by the commissioner of revenue, in such form and requiring such information as said commissioner of revenue may prescribe. Each application shall have attached thereto the written consent of the owners or duly authorized agent of the property on which structures, device or display is to be erected or maintained, and shall state thereon the beginning and ending dates of such written permission: Provided, this subsection shall not apply to persons, firms or corporations who or which advertise their or its own business exclusively, and who or which have been licensed therefor pursuant to sub-section (a) of this section.

(c) It shall be unlawful for any person engaged in business of outdoor advertising to in any manner paint, print, place, post, tack, or affix or cause to be painted, printed, placed, posted, tacked, or affixed any sign or other printed or painted advertisement on or to any stone, tree, fence, stump, pole, building, or other object which is upon the property of another without first obtaining the written consent of such owner thereof, and any person, firm or corporation who in any manner paints, prints, places, posts, tacks, or affixes or causes same to be painted, printed, posted, placed, tacked, or affixed such advertisement on the property of another except as herein provided shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding fifty dollars (\$50.00) or imprisonment of thirty days: Provided, that the provisions of this section shall not apply to legal notices.

(d) It shall be unlawful for any person, firm, or corporation to paint, print, place, post, tack, or affix any advertising matter within the limits of the right-of-way of public highways of the state without the permission of the state highway commission, or upon the streets of the incorporated towns of the state without permission of the governing authorities, and if and when signs of any nature are placed without permission within the highways of the state or within the streets of incorporated towns, it shall be the duty of the highway commission or other administrative body or other governing authorities of the cities and towns of said state to remove said advertising matter therefrom.

(e) Every person, firm, or corporation owning or maintaining signboards, poster boards, printed bulletins, or other outdoor advertisements of any nature within this state shall have imprinted on the same the name of such person, firm, or corporation in sufficient size to be plainly visible and permanently affixed thereto.

(f) A license shall not be granted any person, firm, or corporation having his or its principal place of business outside the state for the display of any advertising of any nature whatsoever, designed or intended for the display of advertising matter, until such person, firm, or corporation shall have furnished and filed with the commissioner of revenue a surety bond to the state, approved by him, in such sum as he may fix, not exceeding five thousand dollars (\$5,000.00), conditioned that such license shall fulfill all requirements of law, and lawful regulations and orders of said commissioner of revenue, relative to the display of advertisements. Such surety bond shall

remain in full force and effect as long as any obligations of such licensee to the state shall remain unsatisfied.

(g) No advertising, or other signs specified in this act, shall be erected in the highway right-of-way so as to obstruct the vision or otherwise to increase the hazard, and all signs upon the highways shall be placed in a manner to be approved by the said highway commission.

(h) Any person, firm, or corporation who or which shall refuse or neglect to comply with the terms and provisions of this section and who shall fail to pay the tax herein provided for within thirty days after the same shall become due or who shall paint, print, place, post, tack, affix or display any advertising sign or other matter contrary to the provisions of this act, the highway commission of the state of North Carolina or other governing body having jurisdiction over the roads and highways of the state, and the governing authorities of cities and towns and its agents and employees, and the board of county commissioners of the various counties of said state, and its employees, are directed to forthwith seize and remove or cause to be removed all advertisements, signs or other matter displayed contrary to the provisions of this act.

For the purpose of more effectually carrying into effect the provisions of this section the commissioner of revenue is authorized and directed to prepare and furnish to the highway commission or other governing body having jurisdiction over the roads and highways of the state a sufficient number of permits to be executed by the owner, lessee or tenant occupying the lands adjacent to the highways of the state, upon which advertisements, signs, or other matter displayed contrary to the provisions of this act, in words as follows:

"I, (we), (owner), (lessee), (tenant) authorize and direct the Highway Commission of the State of North Carolina to remove from my lands the following signs and advertising matter placed upon my lands unlawfully or without my permission:

This.....day of.....19....

....."

And the said highway commission or other governing body having jurisdiction over the roads and highways of the state shall forthwith proceed, through its agents, servants and employees, wherever and whenever in its opinion it is necessary to secure the consent to the removal of said signs or other advertising matter from the lands of the owner, lessee or tenant, to secure said consent and to immediately remove said signs or other advertising matter from the lands adjacent to the highways of the state of North Carolina as herein directed.

(i) Every person, firm, or corporation who violates any of the provisions of this section shall be guilty of a misdemeanor, and in addition to the license tax and penalties provided for herein shall be fined not more than one hundred dollars (\$100.00) for each sign so displayed, or imprisoned, in the discretion of the court.

(j) Counties shall not levy any license tax under this section, but cities and towns may levy license tax not in excess of one-half of that levied

by the state under paragraph two of subsection (a).

(k) Every person, firm, or corporation applying for a license as required in sub-section (a) hereof shall state in his application the number of advertisements, advertising spaces or devices he proposes to erect and/or maintain. Upon issuing license to any applicant the commissioner of revenue shall issue a metal tag for each of the advertisements, advertising spaces or devices mentioned in the application, to be valid for one year from its issuance and showing on its face the date of its expiration. Such metal tag shall be attached by the advertiser in such way as to be plainly visible to the front of each advertisement, advertising space or device erected, maintained or used by him.

(l) Any advertisement, advertising space or device not bearing such a tag or bearing a tag which shows that it has expired, or otherwise erected or maintained contrary to the provisions of this section, shall be deemed a public nuisance and shall be summarily removed or destroyed by the state highway department.

(m) The following signs and announcements are exempted from the provisions of this section: signs upon property advertising the business conducted thereon; notice or advertisements erected by public authority or required by law in any legal proceedings; any signs containing sixty square feet or less bearing an announcement of any town or city advertising itself: Provided the same is maintained at public expense.

No tax shall be levied under this section against any person, firm, or corporation erecting, painting, posting, or otherwise displaying signs or panels advertising his or its own business containing twelve square feet or less of advertising surface: Provided, that this exemption shall not apply if the signs or panels are displayed in more than five counties; and provided further, that subsection (l) shall not apply to signs and panels displayed hereunder. (1937, c. 127, s. 151.)

§ 7880(83)a. Motor advertisers. — (a) Every person, firm, or corporation operating over the streets or highways of this state any motor vehicle or other mechanical conveyance equipped with radio, phonograph, or other similar mechanism to produce music, or having any loud-speaker attachment or other sound magnifying device to produce sound effects for advertising purposes, whether advertising his or its own products or those of others, shall be deemed a motor advertiser, shall procure from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license a tax of one hundred dollars (\$100.00) for each vehicle or conveyance so used: Provided, that any such advertiser owning a located place of business in this state and advertising in not more than five counties shall pay one-fourth the tax provided in this section.

(b) Counties may levy a license tax on the business taxed under this section not in excess of one-fourth of that levied by the state, and cities and towns may levy a tax not in excess of ten dollars (\$10.00). (1937, c. 127, s. 151½.)

§ 7880(83)b. Loan agencies or brokers.—Every person, firm, or corporation engaged in the regular

business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidences of debt for repayment of such loans in installment payments or otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting or negotiating such business of each office or place so maintained, and shall pay for such license a tax of five hundred dollars (\$500.00).

(a) Nothing in this section shall be construed to apply to banks, industrial banks, trust companies, building and loan associations, co-operative credit unions, nor installment paper dealers defined and taxed under other sections of this act, nor shall it apply to business of negotiating loans on real estate as described in section 7880(38), nor to pawnbrokers lending or advancing money on specific articles of personal property. It shall apply to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms or corporations pursuing the business of lending money and taking as security for the payment of such loan and interest an assignment of wages, or an assignment of wages with power of attorney to collect same, or other order or chattel mortgage or bill of sale upon household or kitchen furniture.

(b) At the time of making any such loan, the person, or officer of the firm or corporation making same, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, and the time in which said amount is to be paid, and the rate of interest and discount agreed upon.

(c) Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a misdemeanor, and in addition to double the tax due shall be fined not less than two hundred and fifty dollars (\$250.00) and/or imprisoned, in the discretion of the court. No such loan shall be collectible at law in the courts of this state in any case where the person making such loan has failed to pay the tax levied herein, and/or otherwise complied with the provisions of this section.

(d) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars (\$100.00). (1937, c. 127, s. 152.)

§ 7880(84). Automobile and motorcycle dealers and service stations. — 1. Automotive service stations.—Every person, firm, or corporation engaged in the business of servicing, storing, painting, repairing, welding, or upholstering of motor vehicles, trailers, or semi-trailers, or engaged in the business of retail selling and/or delivering of any tires, tools, batteries, electrical equipment, automotive accessories, including radios designed for exclusive use in automobiles, or supplies, motor fuels and/or lubricants, or any of such com-

modities, in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In cities or towns of less than 2,500 population	\$ 10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	20.00
In cities or towns of 10,000 and less than 20,000 population	30.00
In cities or towns of 20,000 and less than 30,000 population	40.00
In cities or towns of 30,000 or more	50.00

(a) In rural sections where a service station is operated the tax shall be five dollars (\$5.00) unless more than one pump is operated, in which event the tax shall be five dollars (\$5.00) per pump.

(b) The tax levied in this section shall in no case be less than five dollars (\$5.00) per pump.

(c) No additional license tax under this subsection shall be levied upon or collected from any employee, agent, or salesman whose employer or principal has paid the tax for each location levied in this sub-section.

(d) The tax imposed in section 7880(51) shall not apply to the sale of gasoline to dealers for resale.

(e) Counties, cities, and towns may levy a license tax on each place of business located therein under this sub-section not in excess of one-fourth of that levied by the state.

2. Motorcycle Dealers.—Every person, firm, or corporation, foreign or domestic, engaged in the business of buying, selling, distributing, and/or exchanging motorcycles or motorcycle supplies or any of such commodities in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and cities or towns of less than 2,500 population ..	\$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	20.00
In cities or towns of 10,000 and less than 20,000 population	25.00
In cities or towns of 20,000 and less than 30,000 population	30.00
In cities or towns of 30,000 population or more	40.00

(a) A motorcycle dealer paying the license tax under this sub-section may buy, sell, and/or deal in bicycles and bicycle supplies without the payment of an additional license tax.

(b) No additional license tax shall be levied upon or collected from any employee or salesman whose employer has paid the tax levied in this sub-section.

(c) No motorcycle dealer shall be issued dealer's tags until the license tax levied under this sub-section has been paid.

(d) Counties, cities, and towns, may levy a license tax on each place of business located therein, taxed under this sub-section, not in excess of one-fourth of that levied by the state, with the exception that the minimum tax may be as much as ten dollars (\$10.00).

Automotive Equipment and Supply Dealers at Wholesale.—Every person, firm, or corporation engaged in the business of buying, selling, distributing, exchanging, and/or delivering automotive accessories, including radios designed for exclusive use in automobiles, parts, tires, tools, batteries, and/or other automotive equipment or supplies or any of such commodities at wholesale shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on as follows:

In unincorporated communities and in cities or towns of less than 2,500 population ..	\$ 25.00
In cities or towns of 2,500 and less than 5,000 population	30.00
In cities or towns of 5,000 and less than 10,000 population	50.00
In cities or towns of 10,000 and less than 20,000 population	75.00
In cities or towns of 20,000 and less than 30,000 population	100.00
In cities or towns of 30,000 population or more	125.00

Provided, any person, firm, or corporation engaged in the business enumerated in this section and having no located place of business, but selling to retail dealers by use of some form of vehicle, shall obtain from the commissioner of revenue a statewide license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each vehicle used in carrying on such business fifty dollars (\$50.00).

(a) For the purpose of this section, the word "wholesale" shall apply to manufacturers, jobbers, and such others who sell to retail dealers, except manufacturers of batteries.

(b) No additional license tax under this sub-section shall be levied upon or collected from any employee, agent, or salesman whose employer or principal has paid the tax for each location levied in this sub-section.

(c) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this sub-section, not in excess of one-half of that levied by the state, with the exception that the minimum tax may be as much as ten dollars (\$10.00).

4. Motor Vehicle Dealers.—Every person, firm, or corporation engaged in the business of buying, selling, distributing, servicing, storing and/or exchanging motor vehicles, trailers, semi-trailers, tires, tools, batteries, electrical equipment, lubricants, and/or automotive equipment, including radios designed for exclusive use in automobiles, and supplies in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 1,000 population ..	\$ 25.00
In cities or towns of 1,000 and less than 2,500 population	50.00
In cities or towns of 2,500 and less than 5,000 population	75.00
In cities or towns of 5,000 and less than 10,000 population	110.00
In cities or towns of 10,000 and less than 20,000 population	140.00
In cities or towns of 20,000 and less than 30,000 population	175.00
In cities or towns of 30,000 or more	200.00

Provided, that persons, firms, or corporations dealing in secondhand or used motor vehicles exclusively shall be liable for the tax as set out in the foregoing schedule unless such business is of a seasonal, temporary, transient, or itinerant nature, in which event the tax shall be three hundred dollars (\$300.00) for each location where such business is carried on.

(a) Any person, firm, or corporation who or which deals exclusively in motor fuels and lubricants, and has paid the license tax levied under sub-section one of this section, shall not be subject to any license tax under sub-sections two, three, and four of this section.

(b) No additional license tax under this sub-section shall be levied upon or collected from any employee or salesman whose employer has paid the tax levied in this sub-section; nor shall the tax apply to dealers in semi-trailers weighing not more than five hundred pounds and carrying not more than one thousand-pound load, and to be towed by passenger cars.

(c) No dealer shall be issued dealer's tags until the license tax levied under this sub-section has been paid.

(d) Premises on which used cars are stored or sold when owned or operated by a licensed new-car dealer under the same name shall not be deemed as a separate place of business when conducted within the corporate limits of any city or town in which such new-car business is conducted.

(e) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this sub-section, not in excess of one-fourth of that levied by the state, with the exception that the minimum tax may be as much as twenty dollars (\$20.00): Provided, if such business is of a seasonal, temporary, transient, or itinerant nature, counties, cities, and towns may levy a tax of three hundred dollars (\$300.00) for each location where such business is carried on. (1937, c. 127, s. 153.)

§ 7880(85). Emigrant and employment agents.

—(a) Every person, firm, or corporation, either as agent or principal, engaged in soliciting, hiring, and/or contracting with laborers, male or female, in this state for employment out of the state shall apply for and obtain from the commissioner of revenue a state license for each county for the privilege of engaging in such business, and shall pay for such license a tax of five hundred dollars (\$500.00) for each county in which such business is carried on.

(b) Every person, firm, or corporation who or which engages in the business of securing employment for a person or persons and charging

therefor a fee, commission, or other compensation shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license the following annual tax for each location in which such business is carried on:

In unincorporated communities and in cities and towns of less than 2,500 population ..	\$100.00
In cities or towns of 2,500 and less than 5,000 population	200.00
In cities or towns of 5,000 and less than 10,000 population	300.00
In cities or towns of 10,000 or more population	500.00

Provided, that this section shall not apply to any employment agency operated by the federal government, the state, any county or municipality, or whose sole business is procuring employees for work in the production and harvesting of farm crops within the state.

(c) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor and fined, in addition to other penalties, not less than one thousand dollars (\$1,000.00) and/or imprisoned, in the discretion of the court.

(d) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 154.)

§ 7880(86). Plumbers, heating contractors, and electricians.—Every person, firm, or corporation engaged in the business of a plumber, installing plumbing fixtures, piping or equipment, steam or gas fitter, or installing hot-air heating systems, or installing electrical equipment or offering to perform such services, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax based on population:

Municipalities of less than two thousand population	\$ 5.00
Municipalities of more than two thousand and less than five thousand population ..	7.50
Municipalities of more than five thousand and less than ten thousand population ..	10.00
Municipalities of more than ten thousand and less than twenty thousand population ..	12.50
Municipalities of more than twenty thousand and less than thirty thousand population	15.00
Municipalities of more than thirty thousand and less than forty thousand population	17.50
Municipalities of more than forty thousand and less than fifty thousand population ..	20.00
Municipalities of more than fifty thousand population	25.00

Provided, that when a licensed plumber employs only one additional person the tax shall be one-half: Provided further, that any person, firm, or corporation engaged exclusively in the business enumerated in and licensed under this section shall not be liable for the tax provided in section 7880(53). All plumbing inspectors in cities or towns shall make a monthly report to the commissioner of revenue of all installation or repair permits issued for plumbing or heating.

Counties shall not levy any license tax on the

business taxed under this section, but cities and towns may levy a license tax not in excess of the base license tax levied by the state. (1937, c. 127, s. 155; c. 249, s. 5.)

§ 7880(87). Trading stamps.—Every person, firm, or corporation engaged in the business of issuing, selling, and/or delivering trading stamps, checks, receipts, certificates, tokens, or other similar devices to persons, firms, or corporations engaged in trade or business, with the understanding or agreement, expressed or implied, that the same shall be presented or given by the latter to their patrons as a discount, bonus, premium, or as an inducement to secure trade or patronage, and that the person, firm, or corporation selling and/or delivering the same will give to the person presenting or promising the same, money or other thing of value, or any commission or preference in any way on account of the possession or presentation thereof, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license a tax of two hundred dollars (\$200.00).

(a) This section shall not be construed to apply to a manufacturer or to a merchant who sells the goods, wares, or merchandise of such manufacturer, offering to present to the purchaser or customer a gift of certain value as an inducement to purchase such goods, wares or merchandise.

(b) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1937, c. 127, s. 156.)

§ 7880(88). Process tax.—(a) In every indictment or criminal proceeding finally disposed of in the superior court, the party convicted or adjudged to pay the cost shall pay a tax of two dollars (\$2.00): Provided, that this tax shall not be levied in cases where the county is required to pay the cost.

(b) At the time of suing out the summons in a civil action in the superior court or other court of record, or the docketing of an appeal from the lower court in the superior court, the plaintiff or the appellant shall pay a tax of two dollars (\$2.00): Provided, that this tax shall not be demanded of any plaintiff or appellant who has been duly authorized to sue or appeal in forma pauperis; but when in cases brought or in appeals in forma pauperis the costs are taxed against the defendants the tax shall be included in the bill of costs: Provided, that this tax shall not be levied in cases where the county is required to pay the cost, and in tax foreclosure suits.

(c) No county, city, town, or other municipal corporation shall be required to pay said tax upon the institution of any action brought by it, but whenever such plaintiff shall recover in such action, the said tax shall be included in the bill of costs and collected from the defendant.

(d) In any case where the party has paid the aforesaid cost in a civil action and shall recover in the final decision of the case, then such cost so paid by him shall be retaxed against the losing party adjudged to pay the cost, plus five per cent (5%) which the clerk of the superior court may retain for his services, and this shall be received by him, whether he is serving on a salary or fee

basis, and if on a salary basis, shall be in addition to such salary.

(e) This section shall not apply to cases in the jurisdiction of magistrates' courts, whether civil or criminal, except upon appeals to the superior court from the judgment of such magistrate, and shall not apply for the docketing in the superior court of a transcript of a judgment rendered in any other court, whether of record or not.

(f) The tax provided for in this section shall be levied and assessed by the clerk of the superior or other court in all cases described herein; and on the first Monday in January, April, July, and October of each and every year, he shall make to the commissioner of revenue a sworn statement and report in detail, showing the number of the case on the docket, the name of the plaintiff or appellant in civil action or the defendant in criminal action, and accompany such report and statement with the amount of such taxes collected or should have been collected by him in the preceding three months. Any clerk of the superior court failing to make the report and pay the amount of tax due under this section within the first fifteen days of the month in which such report is required to be made, shall be liable for a penalty of ten per cent (10%) on the amount of tax that may be due at the time such report should be made. (1937, c. 127, s. 157.)

§ 7880(89). Morris Plan or industrial banks.—Every person, firm, or corporation engaged in the business of operating a Morris Plan or industrial bank in the state shall apply for and obtain a state license from the commissioner of revenue for the privilege of engaging in such business, and shall pay for such license the following tax:

When the total resources as of December thirty-first of the previous calendar year are—

Less than \$250,000	\$ 75.00
\$250,000 and less than \$500,000	150.00
\$500,000 and less than \$1,000,000	225.00
\$1,000,000 and less than \$2,000,000	300.00
\$2,000,000 and less than \$5,000,000	450.00
\$5,000,000 and over	600.00

(a) Any such bank that shall begin business during the current tax year applicable to this article, the tax shall be calculated on the total resources at the beginning of business.

(b) Every person, firm, or corporation engaged in the business of soliciting loans or deposits for a Morris Plan or other industrial bank not licensed as such by the state for the county in which such person, firm, or corporation solicits business shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license a tax of fifty dollars (\$50.00) per annum, in each county in which business is solicited.

(c) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half (½) of that levied by the state. (1937, c. 127, s. 158.)

§ 7880(90). Marriage license.—There shall be levied on all marriage licenses a state license tax of three dollars on each such license, which shall be assessed and collected by the register of deeds of the county in which the license is issued.

The register of deeds of each county shall sub-

mit to the commissioner of revenue, on the first Monday in January, April, July, and October of each year a sworn statement or report in detail, showing the names of the persons to whom such license has been issued during the preceding three months, and accompany such sworn report or statement with the amount of such state taxes collected by him or that should have been collected by him in the preceding three months.

The counties may levy one dollar (\$1.00) upon such marriage license, to be assessed and collected by the register of deeds and accounted for to the county treasurer at the same time and in the same manner as he accounts to the commissioner of revenue for the state tax. (1937, c. 127, s. 159.)

§ 7880(91). Marble yards.—Every person, firm, or corporation engaged in the business of manufacturing, erecting, jobbing, selling, or offering for sale monuments, marble tablets, grave-stones or articles of like kind or, if a non-resident, selling and erecting monuments, marble tablets, or grave-stones at retail, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license the following tax:

In unincorporated communities and cities or towns of less than 2,000 population ..	\$ 15.00
In cities or towns of 2,000 and less than 5,000 population	25.00
In cities or towns of 5,000 and less than 10,000 population	30.00
In cities or towns of 10,000 and less than 15,000 population	40.00
In cities or towns of 15,000 and less than 20,000 population	50.00
In cities or towns of 20,000 and less than 25,000 population	60.00
In cities or towns of 25,000 population or over	70.00

In addition to the license tax levied in this section an additional tax shall be paid by the person, firm, or corporation engaged in the business taxed under this section of ten dollars (\$10.00) for each person soliciting or selling.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns in which the principal office or plant of any such business is located may levy a license tax not in excess of that levied by the state. (1937, c. 127, s. 160.)

§ 7880(92). Manufacturers of ice cream.—(a) Every person, firm, or corporation engaged in the business of manufacturing or distributing ice cream at wholesale shall apply for and obtain from the commissioner of revenue a state license for each factory or place where manufactured and/or stored for distribution, and shall pay an annual state license tax of ten dollars (\$10.00) in cities and towns of less than 2,500 population; twenty-five dollars (\$25.00) in cities and towns having population between 2,500 and 10,000, and in cities and towns having a population of more than 10,000, fifty dollars (\$50.00) and an additional tax of one-half cent for each gallon manufactured, sold, and/or distributed. Reports shall be made to the commissioner of revenue in such form as he may prescribe within the first ten days of each month covering all such gross sales for the pre-

vious month, and the additional tax herein levied shall be paid monthly at the time such reports are made.

(b) For the purpose of this section the words "ice cream" shall apply to ice cream, frozen custards, sherbets, water ices, and/or similar frozen products.

(c) Every retail dealer selling at retail ice cream purchased from a manufacturer other than a manufacturer who has paid the tax imposed in sub-section (a) of this section shall pay an annual license tax for the privilege of doing business in this state of ten dollars (\$10.00).

(d) Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-fourth of the above. (1937, c. 127, s. 161.)

§ 7880(93). Branch or chain stores. — Every person, firm, or corporation engaged in the business of operating or maintaining in this state, under the same general management, supervision, or ownership, two or more stores, or mercantile establishments where goods, wares, and/or merchandise is sold or offered for sale or from which such goods, wares and/or merchandise are sold and/or distributed at wholesale or retail, or controls by lease, either as lessor or lessee, or by contract, the manner in which any such store or stores are operated, or the kinds, character, or brands of merchandise which are sold therein, shall be deemed a branch or chain store operator, and shall apply for and obtain from the commissioner of revenue a state license for the purpose of engaging in such business of a branch or chain store operator, and shall pay for such license a tax according to the following schedule:

On each and every such store operated in this state in excess of one:

For not more than four additional stores,	
for each such additional store	\$ 50.00
For five additional stores and not more	
than eight, for each such additional store	70.00
For nine additional stores and not more	
than twelve, for each such additional	
store	80.00
For thirteen additional stores and not more	
than sixteen, for each such additional store	90.00
For seventeen additional stores and not	
more than twenty, for each such additional	
store	100.00
For twenty-one additional stores and not	
more than thirty, for each such additional	
store	125.00
For thirty-one additional stores and not	
more than fifty, for each such additional	
store	150.00
For fifty-one additional stores and not	
more than one hundred, for each such	
additional store	175.00
For one hundred and one additional stores	
and not more than two hundred, for each	
such additional store	200.00
For two hundred and one additional stores	
and over, for each such additional store ..	225.00

The term "chain store" as used in this section shall include stores operated under separate charters of incorporation, if there is common ownership of a majority of stock in such separately incorporated companies, and/or if there is similarity

of name of such separately incorporated companies, and/or if such separately incorporated companies have the benefit in whole or in part of group purchase of merchandise, or of common management. And in like manner the term "chain store" shall apply to any group of stores where a majority interest is owned by an individual or partnership.

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars (\$50.00) for each chain store located in such city or town. For the purpose of ascertaining the particular unit in each chain of stores not subject to taxation by the state under this section, and therefore not liable for city license tax, the particular store in which the principal office of the chain in this state is located shall be designated as the unit in the chain not subject to this tax.

In enforcing the provisions of this section, the commissioner of revenue may prorate the total amount of tax for the chain to the several units and the amount so prorated may be recovered from each unit in the chain in the same way as other taxes levied in this act.

This section shall not apply to retail or wholesale dealers in motor vehicles and automotive equipment and supply dealers at wholesale who are not liable for tax hereunder on account of the sale of other merchandise. (1937, c. 127, s. 162.)

Corporation Operating Coal and Ice Yards Liable for Tax.—A corporation operating coal and ice yards at established places of business in several cities of the state, one or more yards being operated in each of the cities, and maintaining scales, bins, etc., and a staff composed of a yard foreman and other employees at each establishment, was held liable for the tax imposed by this section. Atlantic Ice, etc., Co. v. Maxwell, 210 N. C. 723, 188 S. E. 381.

Whether or Not Such Yards Constitute "Stores."—It was held not necessary to decide whether such establishments constitute "stores" in the common acceptance or the legal meaning of the word, since the application of the statute is not limited to stores. Atlantic Ice, etc., Co. v. Maxwell, 210, N. C. 723, 188 S. E. 381.

§ 7880(93)a. Obsolete.

For an analysis of this section, see 13 N. C. Law Rev., No. 4, p. 412.

Where the minimum amount of products which the dealer agreed to purchase represented approximately 50 per cent. of the dealer's yearly requirements of such products for sale at his station, but where actually all of the taxpayer's products were used by the dealer, it was deemed that the taxpayer controlled by contract, the manner in which such automotive service station was operated, and the kind or kinds, character, or brand or brands of merchandise which were sold therein, and the taxpayer was a branch or chain automotive service station operator within the terms of this section. Maxwell v. Shell Eastern Petroleum Products, 90 F. (2d) 39, 41.

§ 7880(93)b. Wholesale distributors of motor fuels.—Every person, firm, or corporation engaged in the business of distributing or selling at wholesale any motor fuels in this state shall apply to the commissioner for an additional annual license to engage in such business, and shall pay for such privilege an additional annual license tax determined and measured by the number of pumps through which such motor fuels are sold, at retail, equal to the sum produced by multiplying by four dollars (\$4.00) the number of pumps owned or leased by the distributor or wholesaler through which motor fuel is retailed.

Any contract or agreement, oral or written, express or implied by the terms or the effects of

which the tax herein imposed shall be passed on directly or indirectly to any person, firm, or corporation not engaged in the business hereby taxed is hereby declared to be against the public policy of this state and null and void, and any person, firm, or corporation negotiating such an agreement, or receiving the benefits thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

The tax herein imposed shall be in addition to all other taxes imposed by this act or under any other laws.

Counties, cities and towns shall not levy any tax by reason of the additional tax imposed by this section, but this section shall in no way affect the right given to counties, cities and towns to levy taxes under section 7880(84).

The business taxed under this section shall not be taxed under section 7880(93). (1937, c. 127, s. 162½.)

§ 7880(94). Patent rights and formulas.—Every person, firm, or corporation engaged in the business of selling or offering for sale any patent right or formula shall apply in advance and obtain from the commissioner of revenue a separate state license for each and every county in this state where such patent right or formula is to be sold or offered for sale, and shall pay for each such separate license a tax of ten dollars (\$10.00).

Counties, cities or towns may levy a license on the business taxed under this section not in excess of the taxes levied by the state. (1937, c. 127, s. 163.)

§ 7880(97). Tax on seals affixed by officers.—Whenever the seal of the state, of the state treasurer, the secretary of state, or of any other public officer required by law to keep a seal (not including clerks of courts, notaries public, and other county officers) shall be affixed to any paper, the tax to be paid by the party applying for same shall be as follows:

For the great seal of the state, on any commission\$2.50

For the great seal of the state on warrants of extradition for fugitives from justice from other states, the same fee and seal tax shall be collected from the state making the requisition which is charged in this state for like service.

For the seal of the state department, to be collected by the secretary of state\$1.00

For the seal of the state treasurer, to be collected by him 1.00

For a scroll, when used in the absence of a seal, the tax shall be on the scroll, and the same as for the seal.

(a) All officers shall keep a true, full, and accurate account of the number of times any of such seals or scrolls are used, and shall deliver to the governor of the state a sworn statement thereof.

(b) All seals affixed for the use of any county of the state, used on the commissions of officers of the national guard, and any other public officer not having a salary, under the pension law, or under any process of court, shall be exempt from taxation, or to any commission issued by the governor to any person in the employ of the state, or to be employed by the state. (1937, c. 127, s. 166.)

Administrative Provisions

§ 7880(98). Unlawful to operate without license.—When a license tax is required by law, and whenever the general assembly shall levy a license tax on any business, trade, employment, or profession, or for doing any act, it shall be unlawful for any person, firm, or corporation without a license to engage in such business, trade, employment, profession, or do the act; and when such tax is imposed it shall be lawful to grant a license for the business, trade, employment, or for doing the act; and no person, firm, or corporation shall be allowed the privilege of exercising any business, trade, employment, profession, or the doing of any act taxed in this schedule throughout the state under one license, except under a state-wide license. (1937, c. 127, s. 181.)

§ 7880(99). Manner of obtaining license from the commissioner of revenue.—(a) Every person, firm, or corporation desiring to obtain a state license for the privilege of engaging in any business, trade, employment, profession, or of the doing of any act for which a state license is required shall, unless otherwise provided by law, make application therefor in writing to the commissioner of revenue, in which shall be stated the county, city, or town and the definite place therein where the business, trade, employment, or profession is to be exercised; the name and resident address of the applicant, whether the applicant is an individual, firm, or corporation; the nature of the business, trade, employment, or profession; number of years applicant has prosecuted such business, trade, employment, or profession in this state, and such other information as may be required by the commissioner of revenue. The application shall be accompanied by the license tax prescribed in this article.

(b) Upon receipt of the application for a state license with the tax prescribed by this article, the commissioner of revenue, if satisfied of its correctness, shall issue a state license to the applicant to engage in the business, trade, employment, or profession in the name of and at the place set out in the application. No license issued by the commissioner of revenue shall be valid or have any legal effect unless and until the tax prescribed by law has been paid, and the fact of such shall appear on the face of the license. (1937, c. 127, s. 182.)

§ 7880(100). Persons, firms, and corporations engaged in more than one business to pay tax on each.—Where any person, firm, or corporation is engaged in more than one business, trade, employment, or profession which is made under the provisions of this article subject to state license taxes, such persons, firms, or corporations shall pay the license tax prescribed in this article for each separate business, trade, employment or profession. (1937, c. 127, s. 183.)

§ 7880(101). Effect of change in name of firm.—No change in the name of a firm, partnership, or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered as commencing business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the

business shall be regarded as continuing. (1937, c. 127, s. 184.)

§ 7880(102). License may be changed when place of business is changed.—When a person, firm, or corporation has obtained a state license to engage in any business, trade, employment, or profession at any definite location in a county, and desires to remove to another location in the same county, the commissioner of revenue may, upon proper application, grant such person, firm, or corporation permission to make such move, and may endorse upon the state license his approval of change in location. (1937, c. 127, s. 185.)

§ 7880(103). Property used in a licensed business not exempt from taxation.—A state license, issued under any of the provisions of this article, shall not be construed to exempt from other forms of taxation the property employed in such licensed business, trade, employment or profession. (1937, c. 127, s. 186.)

§ 7880(104). Engaging in business without a license.—(a) All state license taxes under this article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of June of each year, or at the date of engaging in such business, trade, employment, and/or profession, or doing the act.

(b) If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, but the fine shall not be less than twenty per cent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm or corporation shall pay additional tax of five per centum (5%) of the amount of the state license tax which was due and payable on the first day of June of the current year, in addition to the state license tax imposed by this article, for each and every thirty days that such state license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the commissioner of revenue and paid with the state license tax, and shall become a part of the state license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.

The provisions of this section shall apply to taxes levied by the counties of the state under authority of this act in the same manner and to the same extent as they apply to taxes levied by the state.

(c) If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a state license under this article without such state license, he or it shall be guilty of a misdemeanor, and shall be fined and/or imprisoned in the discretion of the court; and if such failure, neglect, or refusal to apply for and obtain such state license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the

amount of such state license tax which was due and payable at the commencement of the business, trade, employment, or profession, or doing the act, in addition to the state license tax imposed by this article, for each and every thirty (30) days that such state license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the commissioner of revenue and paid with the state license tax and shall become a part of the state license tax.

(d) If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the commissioner of revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes; and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant before some justice of the peace or recorder in the county for the violation of the provisions of this act and as provided in this act. (1937, c. 127, s. 187.)

§ 7880(105). Each day's continuance in business without a state license a separate offense.—Each and every day that any person, firm, or corporation shall continue to exercise or engage in any business, trade, employment, or profession, or do any act in violation of the provisions of this article, shall be and constitute a distinct and a separate offense. (1937, c. 127, s. 188.)

§ 7880(106). Duties of commissioner of revenue.—(a) Except where otherwise provided, the commissioner of revenue shall be the duly authorized agent of this state for the issuing of all state licenses and the collection of all license taxes under this article, and it shall be his duty and the duty of his deputies to make diligent inquiry to ascertain whether all persons, firms, or corporations in the various counties of the state who are taxable under the provisions of this article have applied for the state license and paid the tax thereon levied.

(b) The commissioner of revenue shall continually keep in his possession a sufficient supply of blank state license certificates, with corresponding sheets and duplicates consecutively numbered; shall stamp across each state license certificate that is to be good and valid in each and every county of the state the words "state-wide license," and shall stamp or imprint on each and every license certificate the words "issued by the commissioner of revenue."

(c) Neither the commissioner of revenue nor any of his deputies shall issue any duplicate license unless expressly authorized to do so by a provision of this article or schedule, and unless the original license is lost or has become so mutilated as to be illegible, and in such cases the commissioner of revenue is authorized to issue a

duplicate certificate for which the tax is paid, and shall stamp upon its face "duplicate." (1937, c. 127, s. 189.)

§ 7880(107). License to be procured before beginning business.—(a) Every person, firm, or corporation engaging in any business, trade, and/or profession, or doing any act for which a state license is required and a tax is to be paid under the provisions of this article or schedule, shall, annually in advance, on or before the first day of June of each year, or before engaging in such business, trade, and/or profession, or doing the act, apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, trade, and/or profession, or doing such act, and shall pay the tax levied therefor.

(b) Licenses shall be kept posted where business is carried on. No person, firm, or corporation shall engage in any business, trade, and/or profession, or do the act for which a state license is required in this article or schedule, without having such state license posted conspicuously at the place where such business, trade, and/or profession is carried on; and if the business, trade, and/or profession is such that license cannot be so posted, then the itinerant licensee shall have such license required by this article or schedule in his actual possession at the time of carrying on such business, trade, and/or profession, or doing the act named in this article or schedule, or a duplicate thereof.

(c) Any person, firm, or corporation failing, neglecting, or refusing to have the state license required under this article or schedule posted conspicuously at the place of business for which the license was obtained, or to have the same or a duplicate thereof in actual possession if an itinerant, shall pay an additional tax of twenty-five dollars (\$25.00) for each and every separate offense, and each day's failure, neglect, or refusal shall constitute a separate offense. (1937, c. 127, s. 190.)

§ 7880(108). Sheriff and city clerk to report.—The sheriff of each county and the clerk of the board of aldermen of each city or town in the state shall, on or before the fifteenth day of June of each year, make a report to the commissioner of revenue, containing the names and the business, trade, and/or the profession of every person, firm, or corporation in his county or city who or which is required to apply for and obtain a state license under the provisions of this article or schedule, and upon such forms as shall be provided and in such detail as may be required by the commissioner of revenue. (1937, c. 127, s. 191.)

Art. 3. Schedule C. Franchise Tax

§ 7880(109). Defining taxes in this article.—The taxes levied and assessed in this article or schedule shall be paid as specifically herein provided, and shall be for the privilege of engaging in or carrying on the business or doing the act named; and, if taxpayer be a corporation, shall be a tax also for the continuance of its corporate rights and privileges granted under its charter, if incorporated in this state, or by reason of any act of domestication if incorporated in an-

other state, and such taxes and taxpayers shall be subject to other pertinent regulations mentioned in this act. The taxes levied in this article or schedule shall be for the fiscal year of the state in which said taxes become due, and the lien of such taxes shall attach annually to all real estate of the taxpayer within the state on the date that such taxes are due and payable; and said lien shall continue until such taxes, with any interest, penalty and costs which shall accrue thereon shall have been paid. (1937, c. 127, s. 201.)

§ 7880(110). Franchise or privilege tax on railroads.—Every person, firm, or corporation, domestic or foreign, owning and/or operating a railroad in this state shall, in addition to all other taxes levied and assessed in the state, pay annually to the commissioner of revenue a franchise, license, or privilege tax for the privilege of engaging in such railroad business within the state of North Carolina, as follows:

(a) Such person, firm, or corporation shall during the month of June each year furnish to the commissioner of revenue a copy of the report and statement required by the Machinery Act to be made to the state board of assessment, and such other and further information as the commissioner of revenue may require.

(b) The value upon which the tax herein levied shall be assessed by the commissioner of revenue and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the state of North Carolina shall be the value of the total property, tangible and intangible, in this state, for each such railroad company, as assessed for ad valorem taxation during the calendar year in which such report is due.

(c) The franchise or privilege tax which every such railroad company shall pay for the privilege of carrying on or engaging in intrastate commerce within this state shall be ninety one-hundredths of one per cent (90/100%) of the value ascertained as above by the commissioner of revenue, and tax shall be due and payable within thirty days after date of notice of such tax.

(d) If any such person, firm, or corporation shall fail, neglect, or refuse to make and deliver the report and statement provided for in this section, the commissioner of revenue shall estimate, from the reports and records on file with the state board of assessment, the value upon which the amount of tax due by such company under this section shall be computed, and shall assess the franchise or privilege tax upon such estimate, and shall collect the same, together with such penalties herein imposed for failure to make the report and statement.

(e) It is the intention of this section to levy upon railroad companies a license, franchise, or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within this state, and not a part of interstate commerce; that the tax provided for in this section is not intended to be a tax for the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in

which any such railroad company may be engaged in addition to its business in this state.

(f) No county, city or town shall levy a license, franchise, or privilege tax on the business taxed under this section. (1937, c. 127, s. 202.)

§ 7880(111). Franchise or privilege tax on electric light, power, street railway, gas, water, sewerage, and other similar public service companies not otherwise taxed.—(1) Every person, firm, or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or gas, or owning and/or operating a water or public sewerage system, or owning and/or operating a street railway, street bus or similar street transportation system, for the transportation of freight or passengers for hire, shall, within thirty days after the first day of January, April, July and October of each year, make and deliver to the commissioner of revenue, upon such forms and blanks as required by him, a report verified by the oath of the officer or authorized agent making such report and statement, containing the following information:

(a) The total gross receipts for the three months ending the last day of the month immediately preceding such return from such business within and without this state.

(b) The total gross receipts for the same period from such business within this state.

(c) The total gross receipts from the commodities or services described in this section sold to any other person, firm, or corporation engaged in selling such commodities or services to the public, and actually sold by such vendee to the public for consumption and tax paid to this state by the vendee, together with the name of such vendee, with the amount sold and the price received therefor.

(d) The total amount and price paid for such commodities or services purchased from others engaged in the above named business in this state, and the name or names of the vendor.

(2) From the total gross receipts within this state there shall be deducted the gross receipts reported in sub-section (1) (c) of this section: Provided, that this deduction shall not be allowed where the sale of such commodities were made to any person, firm, or corporation or municipality which is exempted by law from the payment of the tax herein imposed upon such commodities when sold or used by it.

(3) On every such person, firm, or corporation there is levied an annual franchise or privilege tax of six per cent (6%), payable quarterly, of the total gross receipts derived from such business within this state, after the deductions allowed as herein provided for, which said tax shall be for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report herein provided for: Provided, the tax upon privately owned water companies shall be four per cent (4%) of the total gross receipts derived from such business within this state: Provided further, the tax on gas companies shall be at the rate of four per cent (4%) upon the first twenty-five thousand dollars (\$25,000) of the total gross receipts, and the tax on all gross receipts in

excess of twenty-five thousand dollars (\$25,000) shall be at the rate of six per cent (6%).

(4) Any person, firm, or corporation failing to file report and pay tax found to be due in accordance with the provisions of this section at the time herein provided for shall, in addition to all other penalties prescribed in this act, pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall in no case be less than two dollars (\$2.00), and shall be added to the tax, together with interest accrued, and shall become an integral part of the tax.

(5) The report herein required of gross receipts within and without the state, shall include the total gross receipts for the period stated of all properties owned and operated by the reporting person, firm, or corporation on the first day of each calendar quarter year, whether operated by it for the previous annual period, or whether intermediately acquired by purchase or lease, it being the intent and purpose of this section to measure the amount of privilege or franchise tax in each calendar quarter year with reference to the gross receipts of the property operated for the previous calendar quarter year and to fix liability for the payment of the tax on the owner, operator, or lessor on the first day of January, April, July and October of each year.

(6) Companies taxed under this section shall not be required to pay the franchise tax imposed by sections 7880(118-119) or 7880(119)b, unless the tax levied by sections 7880(118-119) and 7880(119)b exceed the tax levied in this section, and no county shall impose a franchise or privilege tax upon the business taxed under this section, and no city or town shall impose a greater privilege or license tax upon such companies than the aggregate privilege or license tax which is now imposed by any such city or town. (1937, c. 127, s. 203.)

§ 7880(112). Franchise or privilege tax on Pullman, sleeping, chair, and dining cars.—Every person, firm, or corporation, domestic or foreign, engaged in the business of operating in this state any Pullman, sleeping, chair, dining or other similar cars, where an extra charge is made for the use or occupancy of same, shall annually, on or before the first day of August, make and deliver to the commissioner of revenue, upon such forms, blanks, and in such manner as may be required by him, a full, accurate, and true report and statement, verified by oath of the officer or authorized agent making such report, of the total gross receipts of such person, firm, or corporation from such business wholly within this state during the year ending the thirtieth day of June of the current year.

(1) Such person, firm, or corporation shall pay an annual privilege, license, or franchise tax of ten per cent (10%) of the total gross receipts derived from such business wholly within this state; which said tax shall be paid for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report and statements herein provided for.

(2) No county, city or town shall impose any

franchise or privilege tax on the business taxed under this section. (1937, c. 127, s. 204.)

§ 7880(113). Franchise or privilege tax on express companies.—(1) Every person, firm, or corporation, domestic or foreign, engaged in this state in the business of an express company as defined in this act, shall, in addition to a copy of the report required in the Machinery Act, annually, on or before the first day of August, make and deliver to the commissioner of revenue a report and statement, verified by the oath of the officer or authorized agent making such report or statement, containing the following information as of the first day of July of the current year:

(a) The average amount of invested capital employed within and without the state in such business during the year ending the thirtieth day of June of the current year.

(b) The total net income earned on such invested capital from such business during the year ending the thirtieth day of June of the current year.

(c) The total number of miles of railroad lines or other common carriers over which such express companies operate in this state during the year ending the thirtieth day of June of the current year.

(2) Every such person, firm, or corporation, domestic or foreign, engaged in such express business within this state shall pay to the commissioner of revenue, at the time of filing the report required in this section, the following annual franchise or privilege tax for the privilege of engaging in such express business within this state:

Where the net income on the average capital invested during the year ending the thirtieth day of June of the current year is six per cent (6%) or less, fifteen dollars (\$15.00) per mile of railroad lines over which operated.

More than six per cent (6%) and less than eight per cent (8%), twenty-one dollars (\$21.00) per mile of railroad lines over which operated.

Eight per cent (8%) and over, twenty-five dollars (\$25.00) per mile of railroad lines over which operated.

(3) Every such person, firm, or corporation, domestic or foreign, who or which engages in such business without having had previous receipts upon which to levy the franchise or privilege tax, shall report to the commissioner at the time of beginning business in this state and pay for such privilege of engaging in business in this state a tax of seven dollars and fifty cents (\$7.50) per mile of the railroad lines over which operated or proposed to operate.

(4) Counties shall not levy a franchise, privilege, or license tax on the business taxed under this section; and municipalities may levy an annual franchise, privilege, or license tax on such express companies for the privilege of doing business within the municipal limits as follows:

Municipalities of less than 500 population..	\$ 5.00
Municipalities of 500 and less than 1,000 population	10.00
Municipalities of 1,000 and less than 5,000 population	20.00
Municipalities of 5,000 and less than 10,000 population	30.00

Municipalities of 10,000 and less than 20,000 population	50.00
Municipalities of 20,000 and over	75.00

(1937, c. 127, s. 205.)

§ 7880(114). Franchise or privilege tax on telegraph companies. — (1) Every person, firm, or corporation, domestic or foreign, engaged in operating the apparatus necessary for communication by telegraph between points within this state, shall annually, on or before the first day of August, make and deliver to the commissioner of revenue, upon such forms and in such manner as required by him, a report verified by the oath of the officer or authorized agent making such report and statement, containing the following information:

(a) The total gross receipts from such business within and without this state for the entire calendar year next preceding due date of such return.

(b) The total gross receipts for the same period from such business within this state.

(2) On every such person, firm or corporation there is hereby levied an annual franchise or privilege tax of six per cent (6%) of the total gross receipts derived from such business within this state. Such gross receipts shall include all charges for services, all rentals, fees and all other similar charges from business which both originates and terminates in the state of North Carolina, whether such business in the course of transmission goes outside this state or not. The tax herein levied shall be for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report herein provided for: Provided, that the tax on the first one thousand dollars (\$1,000.00) of gross receipts of any such telegraph company shall be at the rate of four per cent (4%), and all gross receipts in excess of said first one thousand dollars (\$1,000.00) shall be taxed at the rate of six per cent (6%).

(3) The report herein required shall include the total gross receipts for the period stated of all properties owned, leased, controlled and/or over which operated by such person, firm or corporation in this state.

(4) Any person, firm or corporation failing to file report and pay tax found to be due in accordance with the provisions of this section at the time herein provided for shall, in addition to all other penalties prescribed in this act, pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall in no case be less than two dollars (\$2.00), and shall be added to the tax, together with interest accrued, and shall become an integral part of the tax.

(5) (a) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce or upon any business transacted by the federal government.

(b) Counties shall not levy a franchise, privilege, or license tax on the business taxable under this section, and municipalities may levy the following license tax:

Less than 5,000 population.....	\$10.00
5,000 and less than 10,000 population.....	15.00

10,000 and less than 20,000 population..... 20.00
 20,000 population and over..... 50.00
 (1937, c. 127, s. 206.)

§ 7880(115). Franchise or privilege tax on telephone companies.—Every person, firm, or corporation, domestic or foreign, owning and/or operating a telephone business for the transmission of messages and/or conversations to, from, through, in or across this state, shall, within thirty days after the first day of January, April, July and October of each year, make and deliver to the commissioner of revenue a quarterly return, verified by the oath of the officer or authorized agent making such return, showing the total amount of gross receipts of such telephone company for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed.

(a) An annual franchise or privilege tax of six per cent (6%), payable quarterly, on the gross receipts of such telephone company, is herein imposed for the privilege of engaging in such business within this state. Such gross receipts shall include all rentals, other similar charges, and all tolls received from business which both originates and terminates in the state of North Carolina, whether such business in the course of transmission goes outside of this state or not: Provided, where any city or town in this state has heretofore sold at public auction to the highest bidder the right, license and/or privilege of engaging in such business in such city or town, based upon a percentage of gross revenue of such telephone company, and is now collecting and receiving therefor a revenue tax not exceeding one per cent of such revenues, the amount so paid by such operating company, upon being certified by the treasurer of such municipality to the commissioner of revenue, shall be from time to time credited by the commissioner of revenue to such telephone company upon the tax imposed by the state under this section.

(b) Any such person, firm or corporation, domestic or foreign, who or which fails, neglects, or refuses to make the return, and/or pay the tax at the time provided for in this section, shall pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall not be less than two dollars (\$2.00) in any case, and shall be added to the tax, together with the interest accrued, and shall become an integral part of the tax.

(c) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce.

(d) Counties, cities and towns shall not levy any franchise, license, or privilege tax on the business taxed under this section. (1937, c. 127, s. 207.)

§ 7880(116). Franchise or privilege tax on insurance companies.—Every person, firm, or corporation, domestic or foreign, which contracts on his, their, or its account to issue any policies for or agreements for life, fire, marine, surety, guaranty, fidelity, employers' liability, liability, credit, health, accident, livestock, plate glass, tornado,

automobile, automatic sprinkler, burglary, steam boiler, and all other forms of insurance shall apply for and obtain from the insurance commissioner a state license for the privilege of engaging in such business within this state, and shall pay for such state license the following tax:

(1) The annual license or privilege tax, due and payable on or before the first day of April of each year, shall be for each such license issued to:

An insurance rate-making company or association	\$350.00
A life insurance company or association..	250.00
A fire insurance company or association of companies operating a separate or distinct plant of agencies.....	200.00
An accident or health insurance company or association	200.00
A marine insurance company or association	200.00
A fidelity or surety company or association	200.00
A plate-glass insurance company or association	200.00
A boiler insurance company or association	200.00
A foreign mutual insurance company or association	200.00
A domestic farmers' mutual insurance company or association.....	10.00
A fraternal order.....	25.00
A bond, investment, dividend, guaranty, registry, title guaranty, credit, fidelity, liability, or debenture company or association	200.00
All other insurance companies or associations except domestic mutual burial associations	200.00

On all domestic mutual burial associations, and on each additional branch thereof operated (and where any mutual burial association has designated more than one undertaker to operate for it), the tax shall be in each instance as upon a separate branch thereof:

With a membership of less than 5,000....	\$ 50.00
With a membership of 5,000 or less than 15,000	75.00
With a membership of 15,000 or more....	100.00

When the paid-in capital stock and/or surplus of a life insurance company does not exceed one hundred thousand dollars (\$100,000.00) the license tax levied in sub-section one shall be one-half the amount named.

(2) Every such person, firm, or corporation, domestic or foreign, engaged in the business hereinbefore described in this section, shall by its general agent, president, or secretary, within the first fifteen days of February and August of each year, file with the insurance commissioner of this state a full, accurate, and correct report and statement, verified by the oath of such general agent or president, secretary, or some officer at the home or head office of the company or association in this country, of the total gross premium receipts including premiums or deposits on annuity contracts derived from such insurance business from the residents of this state, or on property located therein, during the preceding six months of the previous calendar year, and at the time of making such report and statement shall, except as hereinafter provided, pay to the insurance commissioner, in addition to other license taxes imposed in this section, a license or privilege tax for the

privilege of engaging in such business in this state, a license tax of two and one-half per cent ($2\frac{1}{2}\%$) upon the amount of such gross premium receipts, with no deduction for dividends, whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any deduction except for return premiums or return assessments. The rate of tax on premiums for liability under the Workmen's Compensation Act for all insurance companies collecting such premiums shall be four per cent (4%) on all premiums collected in this state on such liability insurance, and a corresponding rate of tax shall be collected from self-insurers: Provided, if any general agent shall file with the insurance commissioner a sworn statement showing that one-fifth of the entire assets of his company are invested and are maintained in any of the following securities or property, to wit: bonds of this state or any county, city, town, or school district of this state, or in loans to citizens or corporations or organizations of this state, then such tax shall be three-fourths per centum of such gross premium receipts: Provided, that the provisions herein as to tax and premium receipts shall not apply to domestic farmers' mutual fire insurance companies, nor to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except its members.

(3) Every special or district agent, manager, or organizer, general agent, local canvassing agent, resident, or non-resident adjuster, or non-resident broker, representing any company referred to in this section, shall on or before the first day of April of each year, apply for and obtain from the insurance commissioner a license for the privilege of engaging in such business in this state, and shall pay for such license for each company represented the following annual tax:

Special or district agent, manager, or organizer (including seal).....	\$ 5.00
General agent.....	6.00
Local or canvassing agent (including seal).....	2.50
Resident fire insurance adjuster.....	2.00
Non-resident fire insurance adjuster.....	5.00
Non-resident broker.....	10.00

But any such company having assets invested and maintained in this state as provided in subsection three of this section shall pay the following license fees: for

Special agent (including seal).....	\$2.50
Local canvassing agent (including seal).....	1.00

Any person not licensed as an insurance agent on April first, one thousand nine hundred and thirty-three, and applying for license thereafter, shall pay an examination fee of ten dollars (\$10.00), to be paid to the insurance commissioner as other license fees and taxes: Provided, agents for farm mutual fire insurance companies shall not be required to take an examination and pay the examination fee.

In the event a license issued under this subsection is lost or destroyed, the insurance commissioner, for a fee of fifty cents (\$.50) may certify to its issuance, giving number, date, and form, which may be used by the original party named thereon in lieu of the said original license. There shall be no charge for the seal affixed to such certificate of said license.

(4) Any person, firm, or corporation, domestic or foreign, exchanging reciprocal or inter-insurance contracts as provided herein, shall pay through their attorneys an annual license fee, due and payable on the first day of April of each year, of two hundred dollars (\$200.00) and two and one-half per cent ($2\frac{1}{2}\%$) of the gross premium deposits, and also all other regular fees prescribed by law, to be reported, assessed, and paid as other gross premium taxes provided for in this section: Provided, the tax on workmen's compensation insurance premiums shall be the same as that fixed in sub-section two of this section.

(5) Companies paying the tax levied in this section shall not be liable for franchise tax on their capital stock, and no county, city, or town shall be allowed to impose any additional tax, license, or fee, other than ad valorem taxes, upon any insurance company or association paying the tax levied in this section. The license fees and taxes imposed in this section shall be paid to the insurance commissioner. (1937, c. 127, s. 208.)

§ 7880(118-119). Franchise or privilege tax on domestic and foreign corporations.—(1) Every corporation, domestic and foreign, incorporated or, by any act, domesticated under the laws of this state, except as otherwise provided in this article or schedule, shall, on or before the thirty-first day of July of each year, make and deliver to the commissioner of revenue in such form as he may prescribe a full, accurate and complete report and statement verified by the oath of its duly authorized officers, containing such facts and information as may be required by the commissioner of revenue as shown by the books and records of the corporation as at the close of its last calendar or fiscal year next preceding July thirty-first of the year in which report is due.

(2) Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities. Every such corporation, the capital stock of which is inadequate for its business needs, which is a subsidiary of another corporation or closely affiliated therewith by stock ownership, shall include its indebtedness owed to, endorsed or guaranteed by the parent or affiliated corporation in the amount of capital stock, surplus and undivided profits in determining the basis for its franchise tax liability under this act. Treasury stock shall not be considered in computing capital stock, surplus and undivided profits as basis for franchise tax. In determining the total amount of the capital stock, surplus and undivided profits, as herein defined, effect shall be given to the final judgment of any court approving a corporate reorganization entered prior to July first of any calendar year and since the close of the corporation's last calendar or fiscal year next preceding.

(3) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as herein provided, every foreign corpora-

tion permitted to do business in this state shall allocate to such business in this state a proportion of the total amount of its capital stock, surplus and undivided profits as herein defined, according to the following rules:

(A) If the principal business of a company in this state is manufacturing, or if it is any form of collecting, buying, assembling, or processing goods and materials within this state, the entire net income of such corporation shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or fiscal year of such corporation in the income year is to the book value of its entire real estate and tangible personal property then owned by it, with no deductions on account of encumbrances thereon.

(b) The ratio of the total cost of manufacturing, collecting, buying, assembling, or processing within this state during the income year to the total cost of manufacturing, collecting, assembling, or processing within and without the state. The term "cost of manufacturing, collecting, buying, assembling, or processing within and without this state" as used herein shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis, this term shall be generally interpreted to include as elements of cost within and without this state the following:

(c) The total cost of all goods, materials, and supplies used in manufacturing, assembling, or processing, regardless of where purchased.

(d) The total wages and salaries paid or accrued during the income year in such manufacturing, assembling, or processing activities.

(e) The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling, or processing activities.

(f) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(g) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(h) The word "manufacturing" shall be defined as mining and all processes of fabricating or of curing raw material.

(B) If the principal business of a company in this state is selling, distributing or dealing in tangible personal property within this state, the entire net income of such company shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or fiscal year of such company in the income year is to the book value of its entire real estate and tangible personal property then owned by it, with no deduction on account of encumbrances thereon.

(b) The ratio of the total sales made through or by offices, agencies, or branches located in North Carolina during the income year to the total sales made everywhere during said income year.

(c) The word "sales" as used in this section shall be defined as sale or rental of real estate and sale or rental of tangible properties.

(d) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(e) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(C) If a company deriving profits principally from sources other than holding or sale of tangible property, such proportion as its gross receipts in this state during the income year is to its gross receipts for such year within and without the state.

The words "gross receipts" as used in this section shall be taken to mean and include the entire receipts for business done by such company.

The proportion of the total capital stock, surplus and undivided profits of each such foreign corporation so allocated shall be deemed to be the proportion of the total capital stock, surplus and undivided profits of each such foreign corporation used in connection with its business in this state and liable for annual franchise tax under this section.

(4) After determining the total amount of its capital stock, surplus and undivided profits, if a domestic corporation, or the proportion of its total capital stock, surplus and undivided profits as set out in sub-section three of this section, if a foreign corporation, which amount so determined shall in no case be less than the total assessed value of all the real and personal property in this state of each such corporation nor less than its total actual investment in tangible property in this state, every corporation taxed under this section shall annually pay to the commissioner of revenue, at the time the report and statement is due, a franchise or privilege tax, which is hereby levied, at the rate of one dollar and seventy-five cents (\$1.75) for each one thousand dollars (\$1,000.00) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than ten dollars (\$10.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this state: Provided, that the

basis for the franchise tax on all corporations, eighty per cent (80%) of whose outstanding capital stock is owned by persons or corporations to whom or to which such stock was issued prior to January first, one thousand nine hundred thirty-five, in-part payment or settlement of their respective deposits in any closed bank of the state of North Carolina, shall be the total assessed value of the real and tangible personal property of such corporation in this state for the year in which report and statement is due under the provisions of this section.

(5) The report, statement and tax required by this section shall be in addition to all other reports required or taxes levied and assessed in this state.

Counties, cities and towns shall not levy a franchise tax on the corporations taxed under this section. (1937, c. 127, s. 210.)

Under P. L. 1931, ch. 427, § 210, which was superseded by this section, it was held that the amount of a franchise tax for which a corporation is liable for the years during which its business is continued by its receiver under orders of court is properly paid by the receiver out of assets of the corporation in his hands as an expense of the receivership. *Stagg v. Nissen Co.*, 208 N. C. 285, 180 S. E. 658.

By the express terms of P. L. 1931, ch. 427, § 210, which was superseded by this section, the corporation was liable for the annual franchise tax for each year during which it enjoyed the privilege of the continuance of its charter. It was immaterial whether or not the corporation exercised its privilege of doing or carrying on the business authorized by its charter or certificate of incorporation; it was liable so long as it enjoyed the privilege granted by the state of "being" a corporation. *Id.*

§ 7880(119)b. New corporations.—(a) No corporation, domestic or foreign, shall be permitted to do business in this state without paying the franchise tax levied in this article or schedule. When such domestic corporation is incorporated under laws of this state or such foreign corporation is domesticated in this state, and has not heretofore done business in the state, upon which a report might be filed under section 7880(118-119) notice in writing thereof shall be given to the commissioner of revenue by such corporation, and it shall be competent for the commissioner of revenue and he is hereby authorized to obtain such information concerning the basis for the levy of the tax from such other information he can obtain, and to that end may require of such corporation to furnish him such a report as may clearly reflect and disclose the amount of its issued and outstanding capital stock, surplus and undivided profits as set out in section 7880(118-119), and information as to such other factors as may be necessary to determine the basis of the tax. When this has been determined, in accordance with the provisions of section 7880(118-119) as far as the same may be applicable, and upon the information which he has secured, the commissioner of revenue shall thereupon determine the amount of franchise tax to be paid by such new corporation, and said tax shall be due and payable within thirty days from date of notice thereof from the commissioner of revenue, which tax, in no event, shall be less than a ratable proportion of the tax for the franchise privilege extended for one year on the determined basis, nor less than the minimum tax of ten dollars (\$10.00); the tax levied in this section shall be for the period from date of incorporation or domestication to June thirtieth next following.

(b) Any corporation failing to notify the commissioner of revenue as provided for in sub-section (a) of this section within sixty days after date of the incorporation or domestication of such corporation in this state shall be subject to all penalties and remedies imposed for failure to file any report required under this article or schedule.

(c) The provisions of this section shall apply only to corporations newly incorporated or newly domesticated in this state. (1937, c. 127, s. 211.)

§ 7880(121). Corporations not mentioned.—None of the provisions in sections 7880(118-119) and 7880(119)b shall apply to fraternal, benevolent, or educational corporations not operating for a profit; nor to banking and insurance companies: Provided, that each such corporation must, upon request by the commissioner of revenue, establish in writing its claim for exemption from said provisions. The provisions of section 7880(118-119) and 7880(119)b shall apply to electric light, power, street railway, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck corporations to the extent and only to the extent that the franchise tax levied in sections 7880(118-119) and 7880(119)b exceed the franchise taxes levied in other sections of this article or schedule. The exemptions in this section shall apply only to those corporations specifically mentioned, and no other. (1937, c. 127, s. 213.)

§ 7880(122). Penalty for nonpayment or failure to file report.—(a) Any person, firm, or corporation, domestic or foreign, failing to pay the license, privilege, or franchise tax levied and assessed under this article or schedule when due and payable shall, in addition to all other penalties prescribed in this act, pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall not be less than two dollars (\$2.00) in any case, and shall be added to the tax, together with the interest accrued, and shall become an integral part of the tax.

(b) Any person, firm, or corporation failing to file the report required in this article or schedule on or before the date specified shall pay a penalty of ten per cent (10%) of the tax found to be due, which penalty shall in no case be less than five dollars (\$5.00). (1937, c. 127, s. 214.)

§ 7880(123). When franchise or privilege taxes payable.—(a) Every corporation, domestic or foreign, from which a report is required by law to be made to the commissioner of revenue shall, unless otherwise provided, pay to said commissioner annually the franchise tax as required by sections 7880(118-119) and 7880(119)b.

(b) It shall be the duty of the commissioner of revenue to mail to the registered address, last listed with the commissioner of revenue, of every such corporation, report forms to be used in complying with the provisions of this article or schedule, which forms shall contain a copy of so much of this and other sections of this act as relates to penalties for failure to pay said taxes.

(c) It shall be the duty of the treasurer or other officer having charge of any such corporation, domestic or foreign, upon which a tax is herein im-

posed, to transmit the amount of the tax due to the commissioner of revenue within the time provided by law for payment of same.

(d) Individual stockholders in any corporation, joint stock association, limited partnership, or company paying a tax on its entire capital stock shall not be required to list or pay ad valorem tax on the shares of stock owned by them.

(e) Corporations in the state legally holding shares of stock in other corporations, upon which the tax has been paid to the state by the corporation issuing the same, shall not be required to list or pay an ad valorem tax on said shares of stock. (1937, c. 127, s. 215.)

§ 7880(123)a. Review of returns—additional taxes.—Upon receipt of any report, statement and tax as provided by this article or schedule, the commissioner of revenue shall cause same to be reviewed and examined for the purpose of ascertaining if same constitute a true and correct return as required by this article or schedule. If the commissioner of revenue discovers from the examination of any return, or otherwise, that the franchise or privilege tax of any taxpayer has not been correctly determined, computed and/or paid, he may at any time within three years after the time when the return was due, give notice in writing, to the taxpayer of such deficiency plus interest at the rate of six per cent (6%) per annum from date when return was due, and any overpayment of the tax shall be returned to the taxpayer within thirty days after it is ascertained. In the case of any taxpayer who has failed to file any return or statement required under this article or schedule, the commissioner of revenue shall, from facts within his knowledge, prepare a tentative return for such delinquent taxpayer, and shall assess the taxes, penalties and interest upon these findings; this provision shall not be construed to relieve said taxpayer from liability for a return or from any penalties and remedies imposed for failure to file proper return. Any taxpayer feeling aggrieved by such proposed assessment shall be entitled to a hearing before the commissioner of revenue, if within thirty days after date of notice of such proposed assessment, the taxpayer shall apply in writing for such hearing, explaining in detail his objections to same. If no request for such hearing is made such proposed assessment shall be final and conclusive. If the request for hearing is made, the taxpayer shall be heard by the commissioner of revenue, and after such hearing the commissioner of revenue shall render his decision. The taxpayer shall be advised of his decision by mail, and such amount shall be due and payable within ten days after date of notice thereof. (1937, c. 127, s. 212.)

§ 7880(123)b. Power of attorney.—The commissioner of revenue shall have the authority to require a proper power of attorney of each and every agent for any taxpayer under this act. (1937, c. 127, s. 217.)

§ 7880(123)c. Extension of time for filing returns; fraudulent return made misdemeanor.—(a) The return required by this article or schedule shall be due on or before the dates specified unless written application for extension of time in which to file, containing reasons therefor, is made

to the commissioner of revenue on or before due date of such return. The commissioner of revenue for good cause may extend the time for filing any return under this article or schedule, provided interest at the rate of six per cent (6%) per annum from date return is due is paid upon the total amount of tax due.

(b) The provisions of this act with respect to revision and appeal shall apply to the tax so assessed. The limitation of three years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes upon fraudulent return. Any officer or agent of a corporation who shall knowingly make a fraudulent return under this article or schedule shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) and/or imprisoned at the discretion of the court. (1937, c. 127, s. 216.)

Art. 4. Schedule D. Income Tax

§ 7880(124). Short title.—This article shall be known and may be cited as the income tax article of one thousand nine hundred and thirty-seven. (1937, c. 127, s. 300.)

§ 7880(125). Purpose.—The general purpose of this article is to impose a tax for the use of the state government, upon the net income for the calendar years one thousand nine hundred and thirty-seven and thirty-eight in excess of exemptions herein set out, collectible in the years one thousand nine hundred thirty-eight and thirty-nine.

(a) Of every resident of the state.

(b) Of every domestic corporation.

(c) Of every foreign corporation and of every non-resident individual having a business or agency in this state or income from property owned, and from every business, trade, profession, or occupation carried on in this state.

(d) The tax imposed upon the net income of corporations in this article is in addition to the tax imposed under Schedule C [§ 7880(109) et seq.] of this act. (1937, c. 127, s. 301.)

§ 7880(126). Definitions.—For the purpose of this article, and unless otherwise required by the context:

1. The word "taxpayer" includes any individual, corporation, or fiduciary subject to the tax imposed by this article.

2. The word "individual" means a natural person.

3. A "head of a household" is an individual who actually maintains and supports in one household one or more individuals who are closely related by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based on some moral or legal obligation.

4. The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporation, acting in any fiduciary capacity for any person, estate, or trust.

5. The word "person" includes individuals, fiduciaries, partnerships.

6. The word "corporation" includes joint stock companies or associations and insurance companies.

7. The words "domestic corporation" mean any corporation organized under the laws of this state.

8. The words "foreign corporation" mean any corporation other than a domestic corporation.

9. The words "tax year" mean the calendar year in which the tax is payable.

10. The words "income year" mean the calendar year or the fiscal year upon the basis of which the net income is computed under this article; if no fiscal year has been established, they mean the calendar year.

11. The words "fiscal year" mean an income year, ending on the last day of any month other than December.

12. The word "paid," for the purposes of the deductions under this article, means "paid or accrued" and the words "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this article. The word "received," for the purpose of the computation of the net income under this article, means "received or accrued," and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this article.

13. The word "resident" applies only to individuals, and includes, for the purpose of determining liability to the tax imposed by this article, with reference to the income of any income year, any individual who shall be a resident of the state on the first day of the tax year and shall include all income earned while a resident of this state.

14. The words "foreign country" mean any jurisdiction other than the one embraced within the United States. The words "United States," when used in a geographical sense, includes the states, and territories of Alaska and Hawaii, the District of Columbia, and the possessions of the United States. (1937, c. 127, s. 302.)

Imposition of Tax

§ 7880(127). Individuals.—A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect to the net income of the taxpayer as herein defined, and upon income earned within the state of every non-resident having a business or agency in this state or income from property owned and from every business, trade, profession or occupation carried on in this state, computed at the following rates, after deducting the exemptions provided in this article.

On the excess over the amount legally exempted, up to two thousand dollars, three per cent (3%).

On the excess above two thousand dollars, and up to four thousand dollars, four per cent (4%).

On the excess above four thousand dollars, and up to six thousand dollars, five per cent (5%).

On the excess over six thousand dollars, and up to ten thousand dollars, six per cent (6%).

On the excess over ten thousand dollars, seven per cent (7%). (1937, c. 127, s. 310.)

§ 7880(128). Corporations.

I. Domestic Corporations.—Every corporation organized under the laws of this state shall pay annually an income tax equivalent to six per cent on the entire net income, as herein defined, received by such corporation during the income year.

II. Foreign Corporations.—Every foreign corporation doing business in this state shall pay annually an income tax equivalent to six per cent of a proportion of its entire net income, to be determined according to the following rules:

1. If the principal business of a company in this state is manufacturing, or if it is any form of collecting, buying, assembling, or processing goods and materials within this state, the entire net income of such corporation shall be apportioned by North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or the fiscal year of such corporation in the income year is to the book value of its entire real estate and tangible personal property then owned by it, with no deductions on account of encumbrances thereon.

(b) The ratio of the total cost of manufacturing, collecting, buying, assembling, or processing within this state during the income year to the total cost of manufacturing, collecting, buying, assembling, or processing within and without the state. The term "cost of manufacturing, collecting, buying, assembling, or processing within and without this state," as used herein, shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis, this term shall be generally interpreted to include as elements of cost within and without this state the following:

(c) The total cost of all goods, materials, and supplies used in manufacturing, assembling, or processing, regardless of where purchased.

(d) The total wages and salaries paid or accrued during the income year in such manufacturing, assembling, or processing activities.

(e) The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling or processing activities.

(f) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(g) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(h) The word "manufacturing" shall be defined as mining and all processes of fabricating or of curing raw materials.

2. If the principal business of a company in this state is selling, distributing or dealing in tangible personal property within this state, the entire net income of such company shall be apportioned to North Carolina on the basis of the ratio obtained

by taking the arithmetical average of the following two ratios:

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or fiscal year of such company in the income year is to the book value of its entire real estate and tangible personal property then owned by it, with no deduction on account of encumbrances thereon.

(b) The ratio of the total sales made through or by offices, agencies, or branches located in North Carolina during the income year to the total sales made everywhere during said income year.

(c) The word "sales" as used in this section shall be defined as sale or rental of real estate and sale or rental of tangible properties.

(d) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(e) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(f) Foreign insurance companies doing business in this state and returning premium receipts to the insurance commissioner, and paying the tax upon such premium receipts as provided in section 7880(116) shall be exempt from this tax on income in so far as the income is derived from their insurance business. However, in case of a foreign insurance company owning real estate in this state from which rents are received it is required to file an income tax return reporting income received from such real estate in this state and take credit for actual expenses incurred in connection therewith.

3. If a company deriving profits principally from sources other than holding or sale of tangible property, such proportion as its gross receipts in this state during the income year is to its gross receipts for such year within and without the state.

The words "gross receipts" as used in this section shall be taken to mean and include the entire receipts for business done by such company. (1937, c. 127, s. 311.)

§ 7880(129). Income from stock in foreign corporations.—Income from stock in foreign corporations, in cash dividends, received by individuals, fiduciaries, partnership (to be reported by partners on their individual returns) or corporations, resident in this state, or by non-resident fiduciary if held for a resident of this state, shall be reported and taxed as other income taxable under this article. Every individual, fiduciary, partnership, or corporation owning such shares of stock, and receiving dividends from same, shall report such income to the commissioner of revenue, at the time required by this article for reporting other income, and shall pay the tax herein imposed at the same time and in the same way as tax upon

other income is payable. With respect to corporations paying a tax in this state on a proportionate part of their total income, the holder of shares of stock in such corporation shall pay on the total dividends received an amount equaling the percentage of the corporation's income on which it has not paid an income tax to the state of North Carolina for the year in which said dividends are received by the taxpayer. (1937, c. 127, s. 311½.)

§ 7880(130). Railroads and public-service corporations.—The basis of ascertaining the net income of every corporation engaged in the business of operating a steam, electric railroad, express service, telephone or telegraph business, or other form of public service, when such company is required by the interstate commerce commission to keep records according to its standard classification of accounting, shall be the "net revenue from operations" of such corporation as shown by their records, kept in accordance with that standard classification of accounts when their business is wholly within this state, and when their business is in part within and in part without the state, their net income within this state shall be ascertained by taking their gross "operating revenues" within this state, including in their gross "operating revenues" within this state the equal mileage proportion within this state of their interstate business, and deducting from their gross "operating revenue" the proportionate average of "operating expense" or "operating ratio" for their whole business, as shown by the interstate commerce commission standard classification of accounts:

Provided, that if the standard classification of operating expenses prescribed by the interstate commerce commission for railroads, differs from the standard classification of operating expenses prescribed by the interstate commerce commission for other public-service corporations, such other public-service corporations shall be entitled to the same operating expenses as prescribed for railroads. From the net operating income thus ascertained shall be deducted "uncollectible revenue" and taxes paid in this state for the income year other than income taxes, and the balance shall be deemed to be their net income taxable under this article. That in determining the taxable income of a corporation engaged in the business of operating a railroad under this section, in the case of a railroad located entirely within this state, the net operating income shall be increased or decreased to the extent of any credit or debit balance received or paid, as the case may be, on account of car or locomotive hire; and when any railroad is located partly within and partly without this state, the said net operating income shall be increased or decreased to the extent of an equal mileage proportion within this state of any credit or debit balance received or paid, as the case may be, on account of car or locomotive hire.

For the purposes of this section the words "interstate business" shall mean, as to transportation companies, operating revenue earned within the state by reason of the interstate transportation of persons or property into, out of, or through this state, and as to transmission companies the interstate transmission of messages into, out of, or through the state.

The words "equal mileage proportion within the state" shall mean the proportion of revenue received by the company operating in this state from interstate business as defined in the preceding paragraph, which the distance of movement over lines in this state bears to the total distance of movement over lines of the company receiving such revenue. If the commissioner of revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by state lines as to each transaction involving interstate revenue, the commissioner of revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this state.

The words "proportionate average of 'operating expenses' or 'operating ratio'" shall mean the proportion of gross revenue of a company, on its whole business absorbed in operating expenses, as defined in the interstate commerce commission classification of accounts.

In determining the taxable income of a railroad company operating two or more lines of railroad not physically connected, and when one of such railroad lines is located wholly within this state, the actual earnings and expenses of such line in this state, in so far as they may be severable, shall be used in determining net income taxable in this state.

All other public-service corporations shall file under section 7880(128). (1937, c. 127, s. 312.)

Commissioner of Revenue Must Follow Formula Provided by Section.—In assessing income taxes against a corporation the Commissioner of Revenue must follow this section, leaving the question of whether the result is arbitrary or unwarranted to the determination of the courts upon appeal of the corporation. *Maxwell v. Norfolk, etc., Ry. Co.*, 208 N. C. 397, 181 S. E. 248.

For ascertaining the net income of an interstate railway taxable within this state the formula provided by this section is not void upon its face, but may be unworkable or unfair when applied to a particular railway in particular conditions. *Norfolk, etc., Ry. Co. v. North Carolina*, 297 U. S. 682, 56 S. Ct. 625, 80 L. Ed. 977.

And Burden of Proving Use of Formula Wrong Is on Claimant.—The burden of proving that the use of the formula provided by this section arbitrarily attributes net income to the part of its line within this state derived from its business outside of the state is upon the railway claimant. *Norfolk, etc., Ry. Co. v. North Carolina*, 297 U. S. 682, 56 S. Ct. 625, 80 L. Ed. 977. See also, *Maxwell v. Norfolk, etc., Ry. Co.*, 208 N. C. 397, 181 S. E. 248.

§ 7880(131). Taxable year.—The tax imposed by this article shall be levied, collected, and paid in the year one thousand nine hundred and thirty-eight and thirty-nine, and with respect to the net income received during the calendar year of one thousand nine hundred and thirty-seven and thirty-eight. (1937, c. 127, s. 313.)

§ 7880(132). Conditional and other exemptions.—The following organizations shall be exempt from taxation under this article:

1. Fraternal beneficiary societies, orders or associations.

(a) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(b) Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents.

2. Building and loan associations and co-opera-

tive banks without capital stock, organized and operated for mutual purposes and without profit.

3. Cemetery corporations and corporations organized for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

4. Business leagues, chambers of commerce, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder, or individual.

5. Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

6. Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

7. Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or co-operative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting expenses.

8. Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them.

9. Mutual associations formed under Consolidated Statutes five thousand two hundred fifty-five et seq., formed to conduct agricultural business on the mutual plan; or to marketing associations organized under section five thousand two hundred fifty-nine (a) and following. (1937, c. 127, s. 314.)

§ 7880(133). Fiduciaries.—The tax imposed by this article shall be imposed upon resident fiduciaries having in charge funds or property for the benefit of a resident of this state, and/or income earned in this state for the benefit of a non-resident, and upon a non-resident fiduciary having in charge funds or property for the benefit of a resident of this state, which tax shall be levied, collected and paid annually with respect to:

(a) That part of the net income of estates or trusts which has not become distributable during the income year.

(b) The net income received during the income year by deceased individuals who, at the time of death, were residents and who have died during the tax year or the income year without having made a return.

(c) The entire net income of resident, insolvent, or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of such net income.

(d) The tax imposed upon a fiduciary by this article shall be a charge against the estate or trust. (1937, c. 127, s. 315.)

§ 7880(134). Net income defined.—The words "net income" mean the gross income of a taxpayer, less the deductions allowed by this article. (1937, c. 127, s. 316.)

§ 7880(135). Gross income defined.—1. The words "gross income" mean the income of a taxpayer derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property, also from interest, rent, dividends, securities, or the transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items shall be included in the gross income of the income year in which received by the taxpayer, unless, under the methods of accounting permitted under this article, any such amounts are to be properly accounted for as of a different period. The term "gross income" as used in this article shall include the salaries of all constitutional state officials taking office after the date of the enactment of this article by election, re-election or appointment, and all acts fixing the compensation of such constitutional state officials are hereby amended accordingly.

The term "gross income" as used in this article shall include income from annuities based on three per cent (3%) of the annuity or contract as income yearly.

2. The words "gross income" do not include the following items, which shall be exempt from taxation under this article, but shall be reported in such form and manner as may be prescribed by the commissioner of revenue:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured to beneficiaries or to the estate of the insured.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contracts or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(d) Interest upon the obligation of the United States or its possessions, or of the state of North Carolina, or of a political sub-division thereof.

(e) Salaries, wages, or other compensation received from the United States by officials or employees thereof, including persons in the military or naval forces of the United States.

(f) Any amounts received through accident or health insurance or under the Workmen's Compensation Act, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(g) In case of domestic insurance companies or associations paying a tax on their gross premium receipts, in addition to the above, (a) the net addition required by law to be made within the taxable year to reserve funds, including the actual deposit of sums with the commissioner of insurance or the treasurer of the state, pursuant to the law, as additions to guarantee or reserve funds for the benefit of policyholders, and (b) the sums paid within the taxable year on policy and annuity contracts to policyholders in excess of the reserve

set up during the taxable year. (1937, c. 127, s. 317.)

§ 7880(136). Basis of return of net income.—

1. The net income of a taxpayer shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but such method of accounting must be consistent with respect to both income and deductions, but if in any case such method does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the commissioner does clearly reflect the income, but shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this article.

2. A taxpayer may, with the approval of the commissioner of revenue, and under such regulations as he may prescribe, change the income year from fiscal year to calendar year or otherwise, in which case his net income shall be computed upon the basis of such new income year: Provided, that such approval must be obtained from the commissioner at least thirty days prior to the end of such income year.

3. An individual carrying on business in partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income, whether distributed or not, his distributive share of the net income of the partnership and dividends from foreign corporations for each income year.

4. Every individual taxable under this article who is a beneficiary of an estate or trust shall include in his gross income the distributive share of the net income of the estate or trust received by him or distributable to him during the income year. Unless otherwise provided in the law, the will, the deed, or other instrument creating the estate, trust, or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary, in the case of income accumulated for future distribution), ratable in proportion to their respective interest. (1937, c. 127, s. 318.)

§ 7880(136)a. Subsidiary corporations. — The net income of a corporation which is a subsidiary of another corporation or closely affiliated therewith by stock ownership shall be determined by eliminating all payments to the parent corporation or affiliated corporations in excess of fair value and by including fair compensation to such foreign corporation for all commodities sold to or service performed for the parent corporation or affiliated corporations. For the purpose of determining such net income the commissioner may, in the absence of satisfactory evidence to the contrary, presume that an apportionment by reasonable rules of the consolidated net income of corporations participating in the filing of a consolidated return of net income to the federal government fairly reflects the net income taxable under this chapter, or may otherwise equitably determine such net income by reasonable rules of apportionment of the combined income of the subsidiary, its parent and affiliates or any thereof.

If the capital of a corporation which is a subsidiary of another corporation or closely affiliated therewith by stock ownership is inadequate for its

business needs apart from credit extended or indebtedness guaranteed by the parent or affiliated corporation, the commissioner shall, in determining the net income of such corporation, disregard its indebtedness owed to or guaranteed by the parent or an affiliated corporation in determining the net income taxable under this article.

Such subsidiary or affiliated corporation shall incorporate in its return required under this article such information as the commissioner may reasonably require for the determination of the net income taxable under this article, and failure to so incorporate such information or to furnish such additional information when required within thirty days shall subject the corporation and its officers to the penalties provided in section 7880-(154) for failure to file such return. (1937, c. 127, s. 318½.)

§ 7880(137). Determination of gain or loss.—For the purpose of ascertaining the gain or loss from the sale or other disposition of property, real, personal, or mixed, the basis shall be, in the case of property acquired before January first, one thousand nine hundred and twenty-one, the fair market price or the value of such property as of that date the cost of such property acquired prior to January first, one thousand nine hundred and twenty-one, would be used in all cases if such cost is known or determinable, and in all other cases the cost thereof: Provided, that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this article, such inventory value shall be taken in lieu of costs or market value. The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him, and the gain or loss shall be computed accordingly: Provided, no gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation, if the corporation receiving such property was on the date of the adoption of the plan of liquidation and has continued to be at all times until the receipt of the property the owner of stock (in such other corporation), possessing at least eighty per centum (80%) of the total combined voting power of all classes of stock entitled to vote, and the owner of at least eighty per centum (80%) of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends.) (1937, c. 127, s. 319.)

§ 7880(138). Exchanges of property.—1. When property is exchanged for other property of like kind, the property received in exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

2. In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of property transferred therefor, and no gain or loss shall be deemed to arise therefrom.

3. When, in connection with the reorganization, merger or consolidation of a corporation, a taxpayer receives in place of stock or securities owned by him, new stock or securities, the basis of computing the gain or loss, if any, shall be, in

case the stock or securities owned were acquired before January first, one thousand nine hundred and twenty-one, the fair market price or value thereof as of that date, and in all other cases the cost thereof.

4. The basis of property received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of section 7880(137) shall be the same as it would be in the hands of the transferor. (1937, c. 127, s. 320.)

§ 7880(139). Inventory.—Whenever, in the opinion of the commissioner of revenue, it is necessary, in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commissioner of revenue may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income. (1937, c. 127, s. 321.)

§ 7880(140). Deductions.—In computing net income there shall be allowed as deductions the following items:

1. All the ordinary and necessary expenses paid during the income year in carrying on any trade or business, including:

(a) As to individuals, reasonable wages of employees for services rendered in producing such income.

(b) As to partnerships, reasonable wages of employees and a reasonable allowance for co-partners or members of a firm, for services actually rendered in producing such income, the amount of such salary allowance to be included in the personal return of the co-partner receiving same.

(c) As to corporations, wages of employees and salaries of officers, if reasonable in amount, for services actually rendered in producing such income.

2. Rentals or other payments required to be made as a condition of the continued use or possession for the purpose of the trade of property to which the taxpayer has not taken or is not taking title, or in which he has no equity.

3. Unearned discount and all interest paid during the income year on indebtedness except interest paid or accrued in connection with the ownership of real or personal property the current income from which is not taxable under this article. Interest on indebtedness incurred for the purchase of stock of corporations paying a tax on their entire net income under this article shall be deductible, and a ratable proportion of such interest with respect to corporations paying a tax on a proportion of their net income.

4. Taxes paid or accrued during the income year, except income taxes, gift taxes, taxes levied under section 7880(129), inheritance and estate taxes, and taxes assessed for local benefit of a kind tending to increase the value of the property assessed. No deduction shall be allowed under this section for gasoline tax, sales tax, automobile license or registration fee by individuals not engaged in trade or business, nor shall deduction be allowed for taxes paid or accrued in connection with the ownership of property the current income from which is not taxable under this article. All payments made by an employer into a federal fund as provided by the provisions of Title VIII

and Title IX of the Federal Social Security Act, and all payments made by an employer as provided by a state unemployment compensation law: Provided, that none of the foregoing provisions shall apply to that part of such payments required to be deducted by an employer from the earnings of an employee.

5. Dividends from stock in any corporation, the income of which shall have been assessed, and the tax on such income paid by the corporation under the provisions of this article: Provided, that when only part of the income of any corporation shall have been assessed under this article, only a corresponding part of the dividends received therefrom shall be deducted.

6. Losses actually sustained during the income year of property used in trade or business or of property not connected with trade or business, if arising from fire, storm, shipwreck, or other casualties or theft and if not compensated for by insurance or otherwise. No deduction shall be allowed under this sub-section for losses arising from personal loans or endorsements or other transactions of a personal nature not entered into for profit. A taxpayer shall be allowed to deduct losses in connection with the sale of securities only to the extent of the security gains during the income year, unless such losses resulted from the sale of stocks or bonds held by the taxpayer for a period of two years or more prior to the sale of such stocks or bonds.

7. Debts ascertained to be worthless and actually charged off within the income year, if the amount has previously been included in gross income in a return under this article.

8. A reasonable allowance for depreciation and obsolescence of property used in the trade or business shall be measured by the estimated life of such property; and in case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion. The cost of property acquired since January first, one thousand nine hundred and twenty-one, plus additions and improvements, shall be the basis for determining the amount of depreciation, and if acquired prior to that date the book value as of that date of the property shall be the cost basis for determining depreciation.

In cases of mines, oil and gas wells, and other natural deposits, the cost of development not otherwise deducted will be allowed as depletion, and in the case of leases, the deduction allowed may be equitably apportioned between the lessor and the lessee.

In case the federal government determines depreciation or depletion of property for income tax purposes upon the basis of book value instead of original cost, the depreciation allowed under this article shall be upon the same basis.

9. Contributions or gifts made by individuals within the income year to corporations or associations operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of ten per centum (10%) of the taxpayer's net income, as computed without the benefit of this sub-division.

10. Resident individuals and domestic corpora-

tions having an established business in another state, or investment in property in another state, may deduct the net income from such business or investment if such business or investment is in a state that levies a tax upon such net income. The deduction herein authorized shall in no case operate to reduce the taxable income in this state below the income actually earned in this state or properly allocable as income earned in this state. Nor shall the deduction in any way relate to income received by individuals or domestic corporations from personal services or income from mortgages, stocks, bonds, securities, and deposits.

11. In the case of a non-resident individual, the deductions allowed in this section shall be allowed only if and to the extent that they are connected with income arising from sources within the state; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the state shall be determined under rules and regulations prescribed by the commissioner of revenue. (1937, c. 127, s. 322, c. 249, s. 3.)

§ 7880(141). Items not deductible.—In computing net income no deduction shall in any case be allowed in respect of:

- (a) Personal, living, or family expenses.
- (b) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.
- (c) Premiums paid on any life insurance policy.
- (d) Contributions or gifts made by corporations.
- (e) Income, and gift taxes, including federal tax on undistributed earnings.
- (f) Contributions to individuals.
- (g) Commutation expenses.

(1937, c. 127, s. 323.)

§ 7880(142). Exemptions.—1. There shall be deducted from the net income the following exemptions:

(a) In the case of a single individual, a personal exemption of one thousand dollars (\$1,000.00).

(b) In the case of a married man with a wife living with him, two thousand dollars (\$2,000.00), or in the case of a person who is the head of a household and maintains the same and therein supports one or more dependent relatives, two thousand dollars (\$2,000.00).

(c) In the case of a widow or widower having minor child or children, natural or adopted, two thousand dollars (\$2,000.00).

(d) Two hundred dollars (\$200.00) for each individual (other than husband and wife) dependent upon and receiving his chief support from the taxpayer, if such dependent individual is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(e) In the case of a fiduciary filing a return for that part of the net income of estates or trusts which has not become distributable during the income year one thousand dollars (\$1,000.00).

In the case of a fiduciary filing a return for the net income received during the income year by deceased individuals, who at the time of death were residents and who have died during the tax year or income year, without having made a re-

turn, two thousand dollars (\$2,000.00) if married and one thousand dollars (\$1,000.00) if single.

In the case of a fiduciary filing a return for an insolvent or incompetent individual resident where the fiduciary has complete charge of such net income the same exemption to which the beneficiary would be entitled.

(f) A married woman having a separate and independent income, one thousand dollars (\$1,000.00).

2. The exemptions allowed with respect to a resident of this state having income from a business or agency in another state, or with respect to non-resident having a taxable income in this state unless the entire income of such resident or non-resident individual is shown in the return of such resident or non-resident; and if the entire income is so shown, the exemption shall be prorated in the proportion of the income in this state to the total income.

3. The status on the last day of the income year shall determine the right to the exemptions provided in this section: Provided, that a taxpayer shall be entitled to such exemption for husband or wife or dependents who have died during the income year. (1937, c. 127, s. 324.)

§ 7880(143). Obsolete.

§ 7880(144). Returns.—1. Every resident or non-resident having a net income during the income year taxable in this state of one thousand dollars (\$1,000.00) and over, if single, or if married and not living with husband or wife, or having a net income for the income year of two thousand dollars (\$2,000.00) or over, if married and living with husband or wife, and every corporation doing business in the state shall make a return under oath, stating specifically the items of gross income and the deductions allowed by this article, and such other facts as the commissioner of revenue may require for the purpose of making any computation required by this article. Every resident of the state having gross income from a business, agency or profession in excess of five thousand dollars (\$5,000.00) and every non-resident having gross income from a business, agency or profession within this state in excess of five thousand dollars (\$5,000.00) shall be required to make a return. When the commissioner of revenue has reason to believe any person or corporation is liable for tax under this article, he may require any such person or corporation to make a return.

2. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

3. The return by a corporation shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer or assistant treasurer.

4. The return of an individual, who, while living, received income in excess of the exemption during the income year, and who has died before making the return, shall be made in his name and behalf by the administrator or executor of the estate, and the tax shall be levied upon and collected from his estate.

5. Before a corporation shall be dissolved and

its assets distributed it shall make a return for and settlement of tax for any income earned in the income year up to its period of dissolution.

6. When the commissioner of revenue has reason to believe that any taxpayer so conducts the trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems necessary for the proper computation of the entire net income and the net income properly attributable to the state, and in determining same the commissioner of revenue shall have regard to the fair profit which would normally arise from the conduct of the trade or business.

7. When any corporation liable to taxation under this article conducts its business in such a manner as either directly or indirectly to benefit the members of stockholders thereof or any person interested in such business by selling its products or goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such manner as to create a loss or improper net income for either of said corporations, the commissioner of revenue may determine the amount of taxable income of either or any such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained by the corporation or corporations liable to taxation under this article from dealing in such products, goods or commodities. (1937, c. 127, s. 326.)

§ 7880(145). Fiduciary returns.—1. Every fiduciary subject to taxation under the provisions of this article, as provided in section 7880(133), shall make a return under oath for the individual, estate or trust for whom or for which he acts, if the net income thereof exceeds the personal exemptions; or, if any dividends are received from stock in corporations not incorporated in this state.

2. The return made by a fiduciary shall state specifically the items of gross income and the deductions and exemptions allowed by this article, and such other facts as the commissioner of revenue may prescribe.

3. Fiduciaries required to make returns under this article shall be subject to all the provisions of this article which apply to individuals. (1937, c. 127, s. 327.)

§ 7880(146). Information at the source. — 1. Every individual, partnership, corporation, joint-

stock company or association, or insurance company, being a resident or having a place of business in this state, in whatever capacity acting, including lessors or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and incomes above exemptions allowed in this article, paid or payable during any year to any taxpayer, shall make complete return thereof to the commissioner of revenue under such regulations and in such form and manner and to such extent as may be prescribed by him.

2. Every partnership having a place of business in the state shall make a return, stating specifically the items of its gross income and the deductions allowed by this article, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual, together with the distributive shares of corporation dividends. The return shall be sworn to by one of the partners.

3. Every corporation doing business or having a place of business in this state shall file with the commissioner of revenue, on such form and in such manner as he may prescribe, the names and addresses of all taxpayers, residents of North Carolina, to whom dividends have been paid and the amount of such dividends during the income year. (1937, c. 127, s. 328.)

§ 7880(147). Time and place of filing returns.

—Returns shall be in such form as the commissioner of revenue may from time to time prescribe, and shall be filed with the commissioner at his main office, or at any branch office which he may establish, on or before the fifteenth day of March in each year, and for all taxpayers using a fiscal year, within seventy-five days after expiration of the fiscal year. In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the commissioner may allow further time for filing returns.

There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return, to the effect that the statements contained therein are true. The commissioner shall cause to be prepared blank forms for the said returns, and shall cause them to be distributed throughout the state, and to be furnished upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required. (1937, c. 127, s. 329.)

Applied in *Winston-Salem v. Powell Paving Co.*, 7 F. Supp. 424.

§ 7880(149). Failure to file returns; supplementary returns. — If the commissioner of revenue shall be of the opinion that any taxpayer has failed to file a return or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return or supplementary return, under oath, in such form as he shall prescribe, of all the

items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this article. If from a supplementary return or otherwise the commissioner finds that any items of income, taxable under this article, have been omitted from the original return, or any items returned as taxable that are not taxable, or any item of taxable income over-stated, he may require the items so omitted to be disclosed to him under oath of the taxpayer, and to be added to or deducted from the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this article. The commissioner may proceed under the provisions of section 7880(152), whether or not he requires a return or a supplementary return under this section. (1937, c. 127, s. 331.)

Collection and Enforcement of Tax

§ 7880(150). Time and place of payment of tax.

—(1) The full amount of the tax payable, as shown on the face of the return, shall be paid to the commissioner of revenue at the office where the return is filed at the time fixed by law for filing the return. If the amount of the tax exceeds one hundred dollars (\$100.00), payment may be made in two installments: One-half on the date the return is filed, one-half on or before September fifteenth following, with interest on the deferred payment at the rate of six per cent (6%) per annum.

(2) If the time for filing the return be extended, interest at the rate of six per cent (6%) per annum from the time when the return was originally required to be filed to the time of payment shall be added and paid.

(3) The tax may be paid with uncertified check during such time and under such regulations as the commissioner of revenue shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered. (1937, c. 127, s. 332.)

Applied in *Winston-Salem v. Powell Paving Co.*, 7 F. Supp. 424.

§ 7880(151). Examination of returns.—1. As soon as practicable after the return is filed the commissioner of revenue shall examine and compute the tax, and the amount so computed by the commissioner shall be the tax. If the tax found due shall be greater than the amount theretofore paid, the excess shall be paid to the commissioner within thirty days after notice of the amount shall be mailed by the commissioner, and any over-payment of tax shall be returned within thirty days after it is ascertained.

2. If the return is made in good faith and the under-statement of the tax is not due to any fault of the taxpayer, there shall be no penalty on additional tax added because of such under-statement, but interest shall be added to the amount of the deficiency at the rate of six per cent (6%) per annum until paid.

3. If the under-statement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added to the amount of the

deficiency five per cent (5%) thereof, and, in addition, interest at the rate of six per cent (6%) per annum until paid.

4. If the under-statement is found by the commissioner of revenue to be false or fraudulent, with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and six per centum (6%) per annum upon the amount of tax so found. The provisions of this article with respect to revision and appeal shall apply to a tax thus assessed.

5. The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment. (1937, c. 127, s. 333.)

§ 7880(152). Corrections and changes.—If the amount of the net income for any year of any taxpayer under this article, as returned to the United States treasury department, is changed and corrected by the commissioner of internal revenue or other officer of the United States of competent authority, such taxpayer, within thirty days after receipt of internal revenue agent's report or supplemental report reflecting the corrected net income, shall make return under oath or affirmation to the commissioner of revenue of such corrected net income. If the taxpayer fails to notify the commissioner of revenue of assessment of additional tax by the commissioner of internal revenue the statute of limitations shall not apply. The commissioner of revenue shall thereupon proceed to determine, from such evidence as he may have brought to his attention or shall otherwise acquire, the correct net income of such taxpayer for the fiscal or calendar year, and if there shall be any additional tax due from such taxpayer the same shall be assessed and collected; and if there shall have been an over-payment of the tax the said commissioner shall, within thirty days after the final determination of the net income of such taxpayer, refund the amount of such excess: Provided, that any taxpayer who fails to comply with this section as to making report of such change as made by federal government within the time specified shall be subject to all penalties as provided in section 7880(154), in case of additional tax due, and shall forfeit his rights to any refund due by reason of such change. (1937, c. 127, s. 334.)

§ 7880(153). Additional taxes.—If the commissioner of revenue discovers from the examination of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within three years (except where the taxpayer has failed to notify the commissioner of additional assessment by the federal department—see section 7880(152)) after the time when the return was due, give notice in writing to the taxpayer of such deficiency. Any taxpayer feeling aggrieved by such proposed assessment shall be entitled to a hearing before the commissioner of revenue, if within thirty days after giving notice of such proposed assessment he shall apply for such hearing in writing, explaining in detail his objections to same. If no request for such hearing is so made, such proposed assessment shall be final and conclusive. If the request for hearing is made, the taxpayer shall be heard by the commissioner of revenue, and

after such hearing the commissioner of revenue shall render his decision. The taxpayer shall be advised of his decision and such amount shall be due within ten days after notice is given. The provisions of this article with respect to revision and appeal shall apply to the tax so assessed. The limitation of three years to the assessment of such tax or an additional tax shall not apply to the assessment of additional taxes upon fraudulent returns. Upon failure to file returns and in the absence of fraud the limitation shall be five years. (1937, c. 127, s. 335.)

§ 7880(154). Penalties.—1. If any taxpayer, without intent to evade any tax imposed by this article, shall fail to file a return of income and pay the tax, if one is due, at the time required by or under the provisions of this article, but shall voluntarily file a correct return of income and pay the tax due within sixty days thereafter, there shall be added to the tax an additional amount equal to five per cent thereof, but such additional amount shall in no case be less than one dollar and interest at the rate of one-half of one per centum ($\frac{1}{2}\%$) per month or fraction thereof from the time said return was required by law to be filed until paid.

2. If any taxpayer fails voluntarily to file a return of income or pay the tax, if one is due, within sixty days of the time required by or under the provisions of this article, there shall be added to the tax an additional amount equal to twenty-five per cent (25%) thereof and interest at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month or fraction thereof, from the time such return was required to be filed until paid, but the penalty shall not be less than five dollars (\$5.00).

3. If any taxpayer fails to file a return within sixty days of the time prescribed by this article, any judge of the superior court, upon petition of the commissioner of revenue or of any ten taxable residents of the state, shall issue a writ of mandamus requiring such person to file a return. The order of notice upon the petition shall be returnable not later than ten days after the filing of the petition. The petition shall be heard and determined on the return day or such day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. All writs and processes may be issued from the clerk's offices in any county, and, except as aforesaid, shall be returnable as the court shall order.

4. The failure to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the commissioner of revenue in Raleigh. The certificate of the commissioner of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this article, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

5. If any taxpayer who has failed to file a return, or has filed an incorrect or insufficient return, and has been notified by the commissioner

of revenue of his delinquency, refuses or neglects within twenty days after such notice to file a proper return, or files a fraudulent return, the commissioner shall determine the income of such taxpayer, according to his best information and belief, and assess the same at not more than double the amount so determined. The commissioner may, in his discretion, allow further time for the filing of a return in such case.

6. Any person required under this article to pay any tax or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information for the purposes of computation, assessment or collection of any tax imposed by this article, who wilfully fails to pay this tax, make such return, keep such records or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding six months, or punished by both such fine and imprisonment at the discretion of the court, within the limitations aforesaid. (1937, c. 127, s. 336.)

Revision and Appeal

§ 7880(155). Revision by commissioner of revenue.—A taxpayer may apply to the commissioner of revenue for revision of the tax assessed against him at any time within three years from the time of the filing of the return or from the date of the notice of assessment of any additional tax. The commissioner shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts, and adjust the computation of tax accordingly. The commissioner shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. (1937, c. 127, s. 340.)

§ 7880(156). Appeal.—Any taxpayer may file formal exceptions to a finding by the commissioner of revenue, under the provisions of this article with respect to his taxable income, either to a matter of fact or law, as far as possible stating such exceptions separately. After they are filed, the commissioner shall pass upon the same formally, and notify the taxpayer immediately of his findings upon these exceptions. The taxpayer may, within ten days after notification of the commissioner's ruling upon these exceptions, appeal to the superior court of Wake county, upon paying the tax assessed by the commissioner and giving a bond for costs in the sum of two hundred dollars (\$200.00): Provided, the taxpayer may within the above prescribed time first appeal to the state board of assessments on the exceptions to the findings of the commissioner; and provided further, that the commissioner may in his discretion require a surety bond or a deposit of state or government bonds in double the amount of the alleged deficiency. Appeal may then be taken by either the taxpayer or the commissioner to the superior court of Wake county as provided herein. Upon receipt of such notice and the taxes paid, and the filing of the cost bond in the sum of two hundred dollars (\$200.00), the commissioner shall certify

the record to the superior court of Wake county. In the superior court the proceedings shall be as follows:

The cause shall be entitled, "State of North Carolina on Relation of the Commissioner of Revenue vs. Appellant" (giving name). If there are exceptions to facts found by the commissioner, it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of such civil actions, except that the findings of the commissioner shall be prima facie correct. If only issues of law, or if issues of fact are raised, and the appellant shall waive jury trial at the time of taking the appeal, the appeal may be had to the superior court of the county in which the appellant resides, and the cause shall be heard by the judge holding court in the judicial district in which the appeal is docketed, at chambers, upon ten days notice to the parties of the time and place of hearing, and the said judge shall pass upon and determine all issues, both of law and fact, the state hereby waiving in such cases a trial by jury. Either party may appeal to the supreme court from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that the state, if it should appeal, shall not be required to give any undertaking or make any deposit to secure the cost of such appeal, and the supreme court may advance the cause on its docket so as to give the same a speedy hearing. Any taxes, interest, or penalties paid, found by the court to be in excess of those which can be legally assessed, shall be ordered refunded to the taxpayer, with interest from the time of payment. (1937, c. 127, s. 341.)

Art. 5. Schedule E. Emergency Revenue

§ 7880(156)a. Short title.—This act shall be known and may be cited as the Emergency Revenue Act of one thousand nine hundred thirty-seven. (1937, c. 127, s. 400.)

§ 7880(156)b. Purpose.—The taxes levied in this article are to provide emergency revenue for the support of the public schools of the state in substitution for the taxes formerly levied on property for this purpose. They are levied for the biennium of fiscal years beginning July first, one thousand nine hundred thirty-seven, and ending June thirtieth, one thousand nine hundred thirty-nine.

The tax upon the sale of tangible personal property in this state is levied as a license or privilege tax for engaging or continuing in the business of a "wholesale" or "retail" merchant as defined in this article. Retail merchants may add to the price of merchandise the amount of the tax on the sale thereof, and when so added shall constitute a part of such price, shall be a debt from purchaser to merchant until paid, and shall be recoverable at law in the same manner as other debts. It is the purpose and intent of this article that the tax levied herein on retail sales shall be added to the sales price of merchandise and thereby be passed on to the consumer instead of being absorbed by the merchant.

Any retail merchant who shall, by any character of public advertisement, offer to absorb the tax levied in this article upon the retail sale of mer-

chandise, or in any manner, directly or indirectly, advertise that the tax herein imposed is not considered as an element in the price to the consumer, shall be guilty of a misdemeanor. Any violations of the provisions of this section reported to the commissioner of revenue shall be reported by the commissioner of revenue to the attorney general of the state, to the end that such violations may be brought to the attention of the solicitor of the court of the county or district whose duty it is to prosecute misdemeanors in the jurisdiction. It shall be the duty of such solicitor to investigate such alleged violations and if he finds that this section has been violated to prosecute such violations. The provisions of this section are deemed necessary to prevent fraud and unfair trade practices, but it is the intent of the general assembly that if one or both of such provisions be held unconstitutional and void, that such invalid provision or provisions be considered separable and that the balance of this article be given effect. (1937, c. 127, s. 401.)

§ 7880(156)c. Contingency.—If the congress of the United States shall, at any time during the biennium for which taxes are levied in this article, enact any form of sales or production tax distributable in whole or in part to the several states, the governor and council of state shall estimate the proportion of such tax distributable to this state, and shall, by proclamation of the governor, abate a uniform percentage of all the taxes levied in this article equal in estimated revenue yield to the estimated proportion of yield of such federal tax, and from and after the effective date of such proclamation the commissioner of revenue shall enforce and collect only the remaining percentage of taxes levied in this article. (1937, c. 127, s. 402.)

§ 7880(156)e. Definitions.—For the purposes of this article:

1. The word "person" shall mean any person, firm, partnership, association, corporation, estate or trust.

2. The word "commissioner" shall mean the commissioner of revenue of the state of North Carolina.

3. The word "merchant" shall include any individual, firm, corporation, domestic or foreign, estate or trust, subject to the tax imposed by this article.

4. The words "wholesale merchant" shall mean every person who engages in the business of buying any articles of commerce and selling same to merchants for resale. For the purposes of this article any person, firm, corporation, estate or trust engaged in the business of selling mill machinery or mill machinery parts and accessories, for manufacturing industries and plants, rough and dressed lumber (but not mill work), brick or hollow tile, sand, gravel, crushed stone, rock and granite, and the sale of cotton, tobacco and other farm products, by others than producers, to others for processing or manufacture, shall to the extent of such sales be considered a "wholesale merchant."

5. The words "retail merchant" shall mean every person who engages in the business of buying or acquiring, by consignment or otherwise, any articles of commerce and selling same at retail.

6. The word "retail" shall mean the sale of any articles of commerce in any quantity or quantities

for any use or purpose on the part of the purchaser other than for resale.

7. The word "sale" shall mean any transfer of the ownership or title of tangible personal property for any kind of consideration. Transactions whereby the title is ultimately to pass, and whether such transactions are called leases, conditional sales, or by any other name, and although possession is retained for security, shall be sales.

8. The words "gross sales" shall mean the gross sales price at which such sales were made, whether for cash or on time, and if on time, the price charged on the books for such sales, without allowance for cash discount, and shall be reported as sales with reference to the time of delivery to the purchaser, except as this provision is modified by section 7880(156)i. (1937, c. 127, s. 404.)

For an analysis of former subsections 12 and 13 of this section, see 13 N. C. Law Rev., No. 4, p. 420.

Editor's Note.—Subsections 11, 12 and 13 referred to in the following notes were omitted in the 1937 Act.

Subsection 11.—Second-hand automobiles taken in by a dealer in part payment on other second-hand automobiles were held subject to the tax levied by this article, upon resale of such second-hand cars by the dealer, the exemption from the tax provided by this subsection of this section applying, by its terms, only to second-hand automobiles taken in by the dealer in part payment on new automobiles sold by the dealer. *McCanless Motor Co. v. Maxwell*, 210 N. C. 725, 188 S. E. 389.

The tax imposed by subsection 13 is not a tax upon interstate commerce in violation of art. I, § 8(3), of the Federal Constitution, since the tax is not imposed until after the purchase of the automobile and after it has come to rest within this state for use herein, and is levied without regard to where it was purchased. *Powell v. Maxwell*, 210 N. C. 211, 186 S. E. 326.

And is not void as discriminatory in amount because of the provision that such tax need not be paid when the owner furnishes a certificate from a dealer in this state to the effect that the tax has been paid, and that such dealer will be responsible therefor to the Commissioner of Revenue, since the section requires the same amount to be paid regardless of whether the car is purchased from a dealer within or outside the state, the tax in one instance being payable to the Commissioner of Revenue and in the other instance to the dealer in this state from whom the car is purchased. *Powell v. Maxwell*, 210 N. C. 211, 186 S. E. 326.

Nor is it a tax upon transactions taking place beyond the confines of the state in violation of the Due Process clause of the Federal Constitution (14th Amendment), since the tax is neither an ad valorem nor a sales tax upon the purchase of automobiles, but an excise or use tax imposed upon the owners for the privilege of using them upon the highways of the state. *Powell v. Maxwell*, 210 N. C. 211, 186 S. E. 326.

Applied, as to subsection 12, in *Powell v. Maxwell*, 210 N. C. 211, 186 S. E. 326.

Cited in *McCanless Motor Co. v. Maxwell*, 210 N. C. 725, 188 S. E. 389.

§ 7880(156)f. Exemptions.—The taxes imposed in this article shall not apply to the following:

(a) It is not the purpose of this article to impose a tax upon the business of producing, manufacturing, mixing, blending, or processing any articles of commerce, or upon the sale of such articles of commerce by any one who engages in the business of producing, manufacturing, mixing, blending, or processing, when such articles are sold to a manufacturer or producer, or to a wholesale or retail merchant as defined in this article. The sale of such articles of commerce at retail to a user or consumer shall be taxable at the rate of tax provided in this article upon the retail sale of merchandise: Provided, however, that ice, medicines sold on prescription of physicians, or medicines, compounded, processed or blended by the druggist offering the same for sale at retail, and

the sale of products of farms, forests, mines, and waters, when such sales are made by the producers in their original or unmanufactured state, shall be exempt from the tax levied in this article. Fish and sea foods shall be likewise exempt when sold by the fishermen.

(b) It is not the intent of this article to exempt gasoline from the retail sales tax levied in this article, nor is it considered expedient to levy a tax upon the wholesale distribution of gasoline, payable at the source of distribution, and an additional tax upon the retail sale. Therefore, to carry out the intent of this article, a proportion of the tax of six cents per gallon, to be determined in the manner herein set out, shall be deemed in satisfaction of the tax upon retail sales levied in this article. The director of the budget, the chairman of the highway commission and the commissioner of revenue shall, in the first fifteen days of each quarterly period, determine the total amount of gasoline sold in the state in the preceding three months, and the average retail price, inclusive of gasoline tax, and shall on this basis compute the amount of tax liability at the rate of tax levied in this article on retail sales, and the sum so computed shall be deducted from the tax of six cents per gallon, and credited by the state treasurer to the sales tax revenue levied in this article. These sums shall be available only after full provision is made for the expense of collecting highway revenues, for the administration of the highway and public works commission, for the service of the debt, and for reasonable maintenance of state and county highways, nor shall the application herein made become available to the general fund unless the director of the budget shall find such sum to be reasonably necessary to meet appropriations from the general fund. The amount so allocated to the general fund shall not be transferred from the highway fund, or become a definite charge against it until the surplus in the general fund at the end of the present fiscal year, together with current revenues, shall have been exhausted, or until the director of the budget shall find as a fact that such transfer is necessary to prevent a deficit in the general fund; nor shall such transfer or any part thereof be made until the appropriations from the highway fund, hereinabove referred to, have been provided for. In construing this provision the director of the budget shall not be required to take into account an incidental credit balance of the general fund.

(c) Sale of commercial fertilizer on which the inspection tax is paid, and lime and land plaster used for agricultural purposes whether the inspection tax is paid or not.

(d) Sales made to the state of North Carolina or any of its sub-divisions, including sales of merchandise and articles of commerce to agencies of state or local governments for distribution in public welfare or relief work. This exemption shall not apply to sales made to organizations, corporations, and institutions that are not governmental agencies, owned and controlled by the state or local governments.

(e) The gross receipts from sales of tangible personal property which the state is prohibited from taxing under the constitution or laws of the

United States of America or under the constitution of this state.

(f) Accounts of purchasers, representing taxable sales, on which the tax imposed by this article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales in so far as they represent taxable sales made after July first, one thousand nine hundred thirty-three, and to be added to gross sales if afterwards collected.

(g) Sales of public school books on the adopted list and the selling price of which is fixed by state contract.

(h) Sales of used articles taken in trade, or a series of trades, as a credit or part payment on the sale of a new article, provided the tax levied in this article is paid on the full gross sales price of the new article. In the interpretation of this sub-section, new article shall be taken to mean the original stock in trade of the merchant, and shall not be limited to newly manufactured articles. The resale of articles repossessed by the vendor shall likewise be exempt from gross sales taxable under this article.

(i) Conditional exemptions:

In addition to the exemptions set out in this section there shall also be an exemption of sales by retail merchants, upon conditions hereinafter set out, of the following articles:

Flour, meal, meat, lard, milk, molasses, salt, sugar, coffee, bread and rolls.

It is the intention that this exemption shall apply to these primary and essential articles of food as the words used are commonly understood.

Flour means wheat flour and does not include cereal products other than flour.

Meal means corn meal and not grits, flakes, or other cereal products.

Meat includes fresh or cured meats of animals or fish other than shell-fish, but does not include any specialized products in cans, jars, boxes, or cartons for the retail trade.

Lard is intended to include articles commonly understood by the use of this term, both from animal fat and vegetable substitutes, but does not include oleomargarine, butter, oils, or other like products.

Molasses includes the product commonly understood by that name, and does not include cane, sugar, maple, or other syrups.

Milk includes sweet and buttermilk, but does not include canned milk, evaporated milk, or other milk products.

Sugar includes plain and granulated sugar as commonly understood and no other sugar products.

Coffee means plain, roasted, or ground coffee as commonly understood, but not coffee substitutes.

Bread and rolls shall include only plain white and brown rye bread and rolls and shall not include cakes, buns and other pastries.

(j) Every merchant selling merchandise to other merchants for resale shall deliver to the customer a bill of sale for each sale of merchandise, whether sold for cash or on credit, and shall make and retain a duplicate or carbon copy of each such bill of sale, and shall keep a file of all such duplicate bills of sale for at least three years from date of sale, or until inspected and audited by a representative of the department of revenue. Failure to comply

with the provisions of this sub-section shall subject the seller to liability for tax upon such sales at the rate of tax levied in this article upon retail sales.

Unless records are kept in such manner as will accurately disclose separate accounting of sales of taxable and non-taxable merchandise and in such form as may be accurately and conveniently checked by the representatives of the department of revenue, the exemptions herein made shall not be allowed, and it shall be the duty of the commissioner or his agents to assess a tax upon the total gross sales at the rate of tax levied upon retail sales, and if records are not kept showing total gross sales, it shall be the duty of the commissioner or his agents to assess a tax upon an estimation of sales upon the best information obtainable. (1937, c. 127, s. 406.)

Imposition of Tax

§ 7880(156)g. Must obtain license; additional tax on merchants or sellers of motor vehicles.—If any person, after the thirtieth day of June, one thousand nine hundred thirty-seven, shall engage or continue in any business for which a privilege tax is imposed by this article, such person shall apply for and obtain from the commissioner, upon the payment of the sum of one dollar (\$1.00) a license to engage in and conduct such business upon the condition that such person shall pay the tax accruing to the state of North Carolina under the provisions of this article; and he shall thereby be duly licensed to engage in and conduct such business. The license tax levied in this section shall be a continuing license until revoked for failure to comply with the provisions of this article. License issued under article V, chapter four hundred forty-five, Public Laws of one thousand nine hundred thirty-three, for the year one thousand nine hundred thirty-four one thousand nine hundred thirty-five and under chapter three hundred seventy-one, Public Laws of one thousand nine hundred thirty-five, for the biennium one thousand nine hundred thirty-five one thousand nine hundred thirty-seven, shall be deemed a continuing license under this section.

An additional tax is hereby levied for the privilege of engaging or continuing in the business of selling tangible personal property, as follows:

(a) Wholesale Merchants.—Upon every wholesale merchant as defined in this article, an annual license tax of ten dollars (\$10.00). Such annual license shall be paid in advance within the first fifteen days of July in each year or, in the case of a new business, within fifteen days after business is commenced. There is also levied on each wholesale merchant an additional tax of one-twentieth of one per cent (1/20th of 1%) of the total gross sales of the business.

The sale of any article of merchandise by any "wholesale merchant" to any one other than a merchant for resale shall be taxable at the rate of tax provided in this article upon the retail sale of merchandise. In the interpretation of this article the sale of any articles of commerce by any "wholesale merchant" to any one not taxable under this article as a "retail merchant," except as otherwise provided in this article, shall be taxable by the wholesale merchant at the rate of tax pro-

vided in this article upon the retail sale of merchandise. The commissioner of revenue is authorized to make appropriate regulations, consistent with this article to prevent abuse with respect to existing regulations defining transactions entitled to the rate of tax levied on sales at wholesale.

(b) Retail Merchants.—Upon every retail merchant, as defined in this article, a tax of three per cent (3%) of the total gross sales of the business of every such retail merchant: Provided, however, the maximum tax that shall be imposed upon the sale of any single article of merchandise shall be fifteen dollars (\$15.00).

(c) Motor Vehicles. — In addition to the taxes levied in this article or in any other law, there is hereby levied and imposed upon every person, for the privilege of using the streets and highways of this state, a tax of three per cent (3%) of the sales or purchase price of any new or used motor vehicle purchased or acquired for use on the streets and highways of this state requiring registration thereof under the Motor Vehicle Laws of this state, which said amount shall not exceed fifteen dollars (\$15.00), and shall be paid to the commissioner of revenue at the time of applying for certificate of title or registration of such motor vehicle. No certificate of title or registration plate shall be issued for same unless and until said tax has been paid: Provided, however, if such person so applying for certificate of title or registration and license plate for such motor vehicle shall furnish to the commissioner of revenue a certificate from a motor vehicle dealer licensed to do business in this state, upon a form furnished by the commissioner, certifying that such person has paid the tax thereon levied in this article, the tax herein levied shall be remitted to such person to avoid in effect double taxation on said motor vehicle under this article. The term "motor vehicle" as used in this section shall include trailers. (1937, c. 127, s. 405.)

§ 7880(156)h. Taxes payable.—The taxes levied in this article shall be due and payable in monthly installments on or before the fifteenth day of the month next succeeding the month in which the tax accrues. Every taxpayer liable for the tax imposed by this article shall, on or before the fifteenth day of the month, make out or prepare a return on the blank report form furnished by the commissioner of revenue, showing the total gross sales, the sales exempted from the tax, the net taxable sales, the amount of tax covering sales in the preceding month, and shall mail same, together with the remittance for the amount of the tax, to the commissioner. Such monthly return shall be signed by the taxpayer or a duly authorized agent of the taxpayer. (1937, c. 127, s. 407.)

§ 7880(156)i. Credit sales.—Any person taxable under this article having cash and credit sales may report such cash and credit sales separately, and upon making application therefor may obtain from the commissioner an extension of time for the payment of taxes due on such credit sales. Such extension shall be granted under such rules and regulations as the commissioner may prescribe. When such extension is granted, the taxpayer shall thereafter include in each monthly report all collections made during the month next preceding

and shall pay taxes due thereon at the time of filing such report. (1937, c. 127, s. 408.)

§ 7880(156)l. Forms for making returns.—The monthly returns required under this article shall be made upon forms to be prescribed by the commissioner. (1937, c. 127, s. 411.)

§ 7880(156)m. Extension of time for making returns.—The commissioner for good cause may extend the time for making any return required under the provisions of this article, and may grant such additional time within which to make such return as the commissioner may deem proper, but the time for filing any such return shall not be extended beyond the fifteenth day of the month next succeeding the regular due date of such return. If the time for filing a return be extended, interest at the rate of one-half of one per centum per month from the time the return was required to be filed to the time of payment shall be added and paid. (1937, c. 127, s. 412.)

§ 7880(156)o. Commissioner to correct error.—As soon as practicable after the return is filed the commissioner shall examine it; if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed.

Excessive Payments.—If the amount already paid exceeds that which should have been paid, on the basis of the tax so recomputed, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of this article.

Deficiency of Amount.—(a) If the amount already paid is less than the amount which should have been paid, the difference to the extent not covered by any credits under this article, together with interest thereon at the rate of one-half of one per centum per month from the time the tax was due, shall be paid upon notice and demand by the commissioner.

(b) If any part of the deficiency is due to negligence or intentional disregard to authorized rules and regulations, with knowledge thereof, but without intent to defraud, there shall be added as damages ten per centum of the total amount of the deficiency in the tax, and interest in such a case shall be collected at the rate of one per centum per month of the amount of such deficiency in the tax from the time it was due, which interest and damages shall become due and payable upon notice and demand by the commissioner.

(c) If any part of the deficiency is due to fraud with intent to evade the tax, then there shall be added as damages not more than one hundred per centum of the total amount of the deficiency in the tax, and in such case the whole amount of tax unpaid, including charges so added, shall become due and payable upon notice and demand by the commissioner, and an additional one per centum per month on the tax shall be added from the date such tax was due until paid.

(d) If the amount already paid is less than the amount which should have been paid, the commissioner or his duly authorized agents shall notify the taxpayer of the balance due, plus such interest and damages as are set forth in (a), (b), and (c) just preceding, and if this total amount is not paid or no appeal is taken within thirty days from the date of notice, such action shall be considered as

a refusal on the part of the taxpayer to make a return, and the taxpayer shall be subject to such penalties or provisions as are provided in this article for failure to make a return.

If any taxpayer under this act goes into bankruptcy, receivership, or turns over his stock of merchandise by voluntary transfer to creditors, the tax liability under this article shall constitute a prior lien on such stock of merchandise, subject to execution, and it shall be the duty of the transferee in any such case to retain the amount of the tax due from the first sales from such stock of merchandise and to pay same to the commissioner of revenue. (1937, c. 127, s. 414.)

§ 7880(156)p. Taxpayer must keep records; failure to make returns; duty and power of commissioner.—It shall be the duty of every person engaging or continuing in this state in any business for which a privilege tax is imposed by this article to keep and preserve suitable records of the gross income, gross receipts and/or gross receipts of sales of such business, and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this article. And it shall be the duty of every such person to keep and preserve, for a period of three years, all invoices of goods and merchandise purchased for resale, and all such books, invoices, and other records shall be open for examination at any time by the commissioner or his duly authorized agent.

(a) **Delayed Returns.**—If a delinquent return is received by the commissioner or his duly authorized agents, the taxpayer shall be assessed with a five per centum penalty plus interest at one-half of one per centum per month from the date the tax was due. The penalty provided in this sub-section shall not be less than one dollar (\$1.00).

(b) **Failure to Make Returns.**—If the taxpayer shall fail to make or refuse to make the returns required under this article, then such returns shall be made by the commissioner or his duly authorized agents from the best information available, and such returns shall be prima facie correct for the purposes of this article, and the amount of tax due thereby shall be a lien against all the property of the taxpayer until discharged by payments, and if payment not be made within thirty days after demand therefor by the commissioner or his duly authorized agents, there shall be added not more than one hundred per centum as damages, together with interest at the rate of one per centum per month from the time such tax was due. If such tax be paid within thirty days after notice by the commissioner, then there shall be added ten per centum as damages, and interest at the rate of one per centum from the time such tax was due until paid.

(c) **Not to Issue Certificate of Title or License.**—As an additional means of enforcement of the payment of the tax herein levied the department of revenue shall not issue a certificate of title or a license plate for any new or used motor vehicle sold by any merchant or dealer licensed to do business in this state until the tax levied for the sale of same in this article has been paid, or a certificate, duly signed by a dealer licensed to do business in this state, is filed at the time the application for title or license plate is made for such

motor vehicle; such certificate to be on such form as may be prescribed by the commissioner of revenue, and that such certificate shall show that the said licensed dealer has assumed the responsibility for the payment of the tax levied under this article and agrees to report and remit the tax in his next regular monthly sales tax report required to be filed under this article. (1937, c. 127, ss. 407, 415.)

§ 7880(156)q. Tax shall be lien.—The tax imposed by this article shall be a lien upon the stock of goods and/or any other property of any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out the return provided for under section 7880-(156)h within thirty days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the commissioner showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty-day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. (1937, c. 127, s. 416.)

§ 7880(156)r. Aggrieved person may file petition.—If any person having made the return and paid the tax as provided by this article feels aggrieved by the assessment made upon him by the commissioner, or, in the absence of a report, if an assessment has been made by the commissioner under the provisions of this article, the taxpayer may apply to the commissioner by petition, in writing, within thirty days after the notice is mailed to him, for a hearing and a correction of the amount of the tax so assessed upon him by the commissioner, in which petition he shall set forth the reasons why such hearing should be granted and the amount in which such tax should be reduced. The commissioner shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the commissioner shall notify the petitioner of the time and place fixed for such hearing. After such hearing the commissioner may make such order in the matter as may appear to him just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax and required to pay the same may recover the amount paid, together with interest, in any proper action or suit against the commissioner, and the superior court of the county in which the taxpayer resides or is located shall have original jurisdiction of any action to recover any tax improperly collected. In any suit to recover taxes paid or to collect taxes, the court shall adjudge costs to such extent and in such manner as may be deemed equitable.

Either party to such suit shall have the right to appeal to the supreme court of North Carolina as now provided by law. In the event a final judgment is rendered in favor of the taxpayer in a suit to recover illegal taxes, then it shall be the duty

of the state auditor, upon receipt of a certified copy of such final judgment, to issue a warrant directed to the state treasurer in favor of such taxpayer to pay such judgment, interest, and costs. It shall be the duty of the state treasurer to honor such warrant and pay such judgment out of any funds in the state treasury.

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this article, or to restrain the enforcement of this article. (1937, c. 127, s. 417.)

§ 7880(156)s. Warrant for collection of tax; tax shall constitute debt due state.—If any tax imposed or any portion of such tax be not paid within thirty days after the same becomes due, the commissioner shall proceed to enforce the payment of such tax in the manner provided by section 7880(169). (1937, c. 127, s. 418.)

§ 7880(156)u. Additional tax; remittances made to commissioner; records.—The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this article otherwise specifically provided. But no county, municipality, or district shall be authorized to levy any tax by virtue of the provisions of this article.

Remittances, how made: All remittances of taxes imposed by this article shall be made to the commissioner by bank draft, check, cashier's check, money order, or money, who shall issue his receipts therefor to the taxpayers, when requested, and shall deposit daily all moneys received to the credit of the state treasurer as required by law for other taxes: Provided, no payment other than cash shall be final discharge of liability for the tax herein assessed and levied unless and until it has been paid in cash to the commissioner.

The commissioner shall keep full and accurate records of all moneys received by him, and how disbursed; and shall preserve all returns filed with him under this article for a period of three years. (1937, c. 127, s. 420.)

§ 7880(156)v. Letters in report not to be divulged.—Unless in accordance with the judicial order or as herein provided, the state department of revenue, its agents, clerks or stenographers, shall not divulge the gross income, gross proceeds of sales, or the amount of tax paid by any person as shown by the reports filed under the provisions of this article except to members and employees of the state department of revenue, and the income tax department thereof, for the purpose of checking, comparing, and correcting returns, or to the governor, or to the attorney general, or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of this article.

The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a notice from the commissioner to the effect that the tax levied under this article against any such corporation has been paid, if any such corporation is a taxpayer under the law, or until he shall be no-

tified by the commissioner that the applicant is not subject to pay a tax hereunder. (1937, c. 127, s. 421.)

§ 7880(156)w. Unlawful to refuse to make returns; penalty.—It shall be unlawful for any person to fail or refuse to make the return provided to be made in this article, or to make any false or fraudulent return or false statement in any return of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice-president, secretary, or treasurer of any company to make or permit to be made for any company or association any false return, or any false statement in any return required by this article, with the intent to evade the payment of any tax hereunder; or for any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the commissioner or his duly appointed agent, as required by this article, or to fail or refuse to permit the inspection or appraisal of any property by the commissioner or his duly appointed agent, or to refuse to offer testimony or produce any record as required in this article. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding six months, or punished by both such fine and imprisonment, at the discretion of the court within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury, and, on conviction thereof, shall be punished in the manner provided by law. Any company for which a false return shall be made or a return containing a false statement as aforesaid, shall be guilty of a misdemeanor, and may be punished by a fine of not more than one thousand dollars (\$1,000.00). (1937, c. 127, s. 422.)

§ 7880(156)x. Commissioner to make regulations.—The commissioner shall from time to time promulgate such rules and regulations not inconsistent with this article for making returns and for the ascertainment, assessment, and collection of the tax imposed hereunder as he may deem necessary to enforce its provisions, and upon request shall furnish any taxpayer with a copy of such rules and regulations. (1937, c. 127, s. 423.)

§ 7880(156)y. Commissioner or agent may examine books, etc.—The commissioner, or his authorized agents, may examine any books, papers, records, or other data bearing upon the correctness of any return, or for the purpose of making a return where none has been made, as required by this article, and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person or persons. If any person summoned as a witness shall fail to obey any summons to appear before the commissioner or his authorized agent, or shall refuse to testify or answer any material question or to produce any book, record, paper, or other data when required to do so, such failure or refusal shall be reported to the attorney general or the

district solicitor, who shall thereupon institute proceedings in the superior court of the county where such witness resides to compel obedience to any summons of the commissioner, or his authorized agent. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts, to be paid from the proper appropriation for the administration of this article. (1937, c. 127, s. 424.)

§ 7880(156)z. Excess payments; refund.—If upon examination of any monthly return made under this article it appears that an amount of tax has been paid in excess of that properly due, then the amount in excess shall be credited against any tax or installment thereof then due from the taxpayer, under any other subsequent monthly return, or shall be refunded to the taxpayer by certificate of over-payment issued by the commissioner to the state auditor, which shall be investigated and approved by the attorney general, and the auditor shall issue his warrant on the treasurer, which warrant shall be payable out of any funds appropriated for that purpose. (1937, c. 127, s. 425.)

§ 7880(156)aa. Prior rights or actions not affected by this act.—Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due, under the Revenue Act of one thousand nine hundred thirty-five, prior to the date of which this act becomes effective, whether such assessment, appeal, suit, claim or action shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the sections of the Revenue Act of one thousand nine hundred thirty-five, amended or repealed by this act, are expressly continued in full force, effect, and operation for the purpose of the assessment and collection of any taxes due under any such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures, or claims for a failure to comply therewith. (1937, c. 127, s. 426.)

§ 7880(156)cc. To prevent unfair trade practices, commissioner of revenue may require tax passed on to consumer.—In order that fair trade practices may be encouraged and any deleterious effect of the retail sales tax levy may be minimized, the commissioner of revenue is empowered and directed to devise, promulgate and enforce regulations under which retail merchants shall collect from the consumers, by rule uniform as to classes of business, the sales tax levied upon their business by the retail sales tax article: Provided, that the commissioner of revenue shall have the power to change the regulations and methods under which the merchants shall collect the tax from the consumers, from time to time, as experience may prove expedient and advisable. Methods for the passing on by merchants to their customers the retail sales tax on sales to said customers may include plans which require both more and less than three (3%) per cent of the sale price, the purpose being to enable the merchants to collect approximately the amount of three (3%) per cent on their total sales volume. The commissioner of revenue is hereby authorized and empowered to make and adopt

rules and regulations requiring merchants to use tokens or stamps, or other means, if found to be practical, which may be determined by the commissioner, to provide a method whereby the amount of tax collected by the merchant from the customer shall be as nearly as possible three per cent (3%) of each purchase. Such regulations as herein authorized shall be promulgated by the commissioner of revenue, to become effective after reasonable notice to the retail merchants, and when so promulgated they shall have the full force and effect of law. Any merchant who violates such rules and regulations shall be guilty of a misdemeanor and upon conviction shall be fined not less than five (\$5.00) dollars nor more than five hundred (\$500.00) dollars or be imprisoned for not more than six months, or be both fined and imprisoned in the discretion of the court: Provided, however, that every such violation shall be a separate offense hereunder. It shall be the duty of the solicitors of the several judicial districts of the state to prosecute violations of this section.

The provisions of this section shall not affect in any manner the character or validity of the sales tax levy as a merchants license tax, and they may not be pleaded or considered in the event any provision of the General Revenue Act is attacked as unconstitutional. (1937, c. 233, ss. 1, 2.)

§ 7880(156)dd. Tax on building materials.—

There is hereby levied and there shall be collected from every person, firm, or corporation, an excise tax of three per cent of the purchase price of all tangible personal property purchased or used subsequent to June thirtieth, one thousand nine hundred thirty-seven, which shall enter into or become a part of any building or any other kind of structure in this state, including all materials, supplies, fixtures and equipment of every kind and description which shall be annexed thereto or in any manner become a part thereof, except rough and dressed lumber (but not mill work), brick or hollow tile, sand, gravel, crushed stone, rock and granite.

The provisions of this section shall not apply:

(a) In respect to the use of any such article of tangible personal property, the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this section, whether under the laws of this state or of some other state or territory of the United States: Provided, that if the tax imposed on the sale or use of such tangible personal property imposed by other laws on the sale or use of such property is less than the tax imposed by this section, the provisions of this section shall apply, but at a rate measured by the difference between the rate herein fixed and the rate by which the previous tax upon the sale or use of such property was computed: Provided, that the tax upon the use of a single article of merchandise shall be limited as provided in Schedule E, and shall not apply to tangible personal property exempt from tax and/or classified, when sold, as wholesale sales under the provisions of Schedule E preceding this section in Schedule E.

(b) In respect to such tangible personal property as shall enter into any building or structure erected or constructed under any contract with the federal government or any of its agencies, or

with the state of North Carolina or any of its agencies, or with any county or municipality in North Carolina or any of their agencies.

Every person liable for the tax imposed by this section shall report to the commissioner of revenue and pay the taxes herein levied in accordance with the provisions of Article V, Schedule E, Emergency Revenue Act of one thousand nine hundred thirty-seven, and in so far as the provisions of said article are appropriate and not inconsistent herewith, shall be liable for all penalties and shall be subject to all of the provisions of said article. The provisions of said article relating to the administration of said Act, auditing of returns and as to the authority and powers of the commissioner to make rules and regulations for the administration of this section, shall be deemed and taken as a part of this section. The definitions of terms, so far as may be applicable to this section, contained in Article V, shall be treated as definitions applicable to this section.

The taxes levied in this section shall be levied against the purchaser of the articles named. If purchases of building materials that are not exempt from tax are made by a contractor there shall be joint liability for the tax against both contractor and owner, but the liability of the owner shall be satisfied if affidavit is required of the contractor, and furnished by him, before final settlement is made, showing that the tax herein levied has been paid in full.

(c) A receipt given by a retail merchant maintaining a place of business in this state, showing thereon that the retail sales tax imposed by Article V, Schedule E, will be paid by such retail merchant on the articles of commerce included within said purchase, shall be sufficient to relieve the purchaser from further liability for tax imposed by this section: Provided further, that the commissioner may by rule and regulation provide that a similar receipt from a retailer who does not maintain a place of business in this state shall also be sufficient to relieve the purchaser of further liability for the tax to which such receipt may refer.

The term "retail merchant" as used in this sub-section shall include wholesalers, jobbers, manufacturers, or their agents, selling taxable building materials for use or consumption in this state to others than merchants for resale. (1937, c. 127, s. 427, c. 249, s. 4.)

Art. 5A. Schedule G. Gift Taxes

§ 7880(156)ee. Gift taxes; classification of beneficiaries; exemptions; rates of tax.—State gift taxes, as hereinafter prescribed, are hereby levied upon the shares of the respective beneficiaries in all property within the jurisdiction of this state, real, personal and mixed, and any interest therein which shall in any one calendar year pass by gift made after the effective date of this article.

The taxes shall apply whether the gift is in trust or otherwise and whether the gift is direct or indirect. In the case of a gift made by a non-resident, the taxes shall apply only if the property is within the jurisdiction of this state. The taxes shall not apply to gifts made prior to the effective date of this article.

The tax shall not apply to the passage of property in trust where the power to revest in the

donor title to such property is vested in the donor, either alone or in conjunction with any person not having substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power (other than by the donor's death) shall be considered to be a passage from the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a passage by donor of such income by gift.

The amount of tax on all gifts made taxable under this article shall be based on the relationship between the donor and donee, and graduated in proportion to the amount of such gifts. The rates of tax and exemptions shall be the rates set out in sections 7880(3), 7880(4) and 7880(5), and the same exemptions allowed in said sections to gifts made in any one calendar year shall apply, except that the exemption allowed to each child of the donor shall be five thousand (\$5,000.00) dollars. Children of a deceased parent shall be allowed collectively the same amount of exemption as a child of the donor. The total exemptions that may be allowed under this section shall not exceed eight times the exemption allowed for a single year, and where two or more gifts are made in excess of the exemption the tax shall be calculated on the total amount of gifts in excess of the exemption.

It is expressly provided, however, that so much of such property as shall so pass exclusively for state, county or municipal purposes, within this state, or for charitable, educational or religious purposes within this state, and so much of such property as shall so pass for the exclusive benefit of any institution, association, or corporation in this state, the property of which is exempt from taxation by the laws of this state, shall be exempt from any and all taxation under the provisions of this article. (1937, c. 127, s. 600.)

§ 7880(156)ff. Transfer for less than adequate and full consideration.—Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this article, be deemed a gift and shall be included in computing the amount of gifts made during the calendar year. (1937, c. 127, s. 601.)

§ 7880(156)gg. Gifts made in property.—If the gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift. (1937, c. 127, s. 602.)

§ 7880(156)hh. Manner of determining tax; time of payment; application to department of revenue for correction of assessment.—The tax imposed by this article shall be paid by the donor on or before the fifteenth day of March following the close of the calendar year.

Report of the gifts shall be made by the donor to the state department of revenue on blank forms prepared by the state department of revenue and furnished on application to any taxpayer, and the amount of tax due shall be paid at the time such report is made. The department of revenue shall audit the returns made un-

der this article, and if it is found that the amount of tax paid is less than the amount lawfully due under the provisions of this article shall forward a statement of the taxes determined to the person or persons primarily chargeable with the payment thereof, such additional taxes to be collected under the same rules and regulations contained in this act for the collection of other taxes, and if an over-payment should be found to have been made, a refund of such over-payment shall be made to the taxpayer. Within one year after the tax has been determined, any person aggrieved by the determination, may apply in writing to the department of revenue, which may make such corrections of the taxes as it may determine proper: Provided, however, that the rejection of the application in whole or in part by the department of revenue shall not prevent any person from applying to the court, as hereinafter provided, for the correction of said taxes. (1937, c. 127, s. 603.)

§ 7880(156)ii. Penalties and interest.—In any case where a donor fails to file a return at the proper time, the department of revenue shall assess a penalty of ten per centum (10%) of the tax determined by it, together with interest upon such tax and penalty at the rate of six per centum (6%) per annum from the date when such report should have been filed until the date of the assessment.

If any tax, or any assessment of tax, penalties and interest, or any part thereof, be not paid when due it shall bear interest at six per centum (6%) per annum from the date of assessment until paid. (1937, c. 127, s. 604.)

§ 7880(156)jj. Lien for tax; collection of tax.—The tax imposed by this article shall be a lien upon all gifts that constitute the basis for the tax for a period of ten years from the time they are made. If the tax is not paid by the donor when due, each donee shall be personally liable, to the extent of their respective gifts, for so much of the tax as may have been assessed, or may be assessable thereon. Any part of the property comprised in the gift that may have been sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien hereby imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property) except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

If the tax is not paid within thirty days after it has become due, the department of revenue may use any of the methods authorized in this act for the collection of other taxes to enforce the payment of taxes assessed under this article.

In any proceeding by warrant or otherwise to enforce the collection of said tax, the donor shall be liable for the full amount of the tax due by reason of all the gifts constituting the basis for such tax, and each donee shall be liable only for so much of said tax as may be due on account of his respective gift. (1937, c. 127, s. 605.)

§ 7880(156)kk. Period of limitation upon assessment; assessment upon failure or refusal to file proper return.—Except as provided in the

next succeeding paragraph the amount of taxes imposed by this article shall be assessed within three years after the return was filed.

In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed at any time.

If a donor should fail or refuse on demand to file a correct and proper return as required by this article, the department of revenue may make an estimate of the amount of taxes due the state by such donor, and by the respective donees, from any information in its possession, and assess the taxes, penalties and interest due the state by such taxpayers. (1937, c. 127, s. 606.)

§ 7880(156)ll. Tax to be assessed upon actual value of property; manner of determining value of annuities, life estates and interests less than absolute interest.—Said taxes shall be assessed upon the actual value of the property at the time of the transfer by gift. In every case where there shall be a gift to take effect in possession or enjoyment after the expiration of one or more life estates, or at any time in the future, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he or she becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in such property, or any interest therein less than an absolute interest, shall be determined by the annuity tables provided for by section one thousand seven hundred and ninety-one of Consolidated Statutes. In every case in which it is impossible to compute the present value of any interest in property so passing, the department of revenue may effect such settlement of the tax as it shall deem to be for the best interest of the state, and payment of the same so agreed upon shall be a full satisfaction of such taxes. (1937, c. 127, s. 607.)

§ 7880(156)mm. Application for relief from taxes assessed; appeal.—A taxpayer may apply to the commissioner of revenue for revision of the tax assessed against him at any time within three years from the time of the filing of the return or from the date of the notice of assessment of any additional tax. The commissioner shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts, and adjust the computation of tax accordingly. The commissioner shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. The taxpayer shall have the right of appeal from any assessment made by the commissioner of revenue in the same manner and form as set out in section 7880(156) with respect to income taxes. (1937, c. 127, s. 608.)

§ 7880(156)nn. Returns; time of filing; extension of time for filing.—Any person who within the calendar year nineteen hundred and thirty-seven, after the effective date of this article, or any calendar year thereafter, makes any gift or gifts taxed by this article, shall report in duplicate, under oath, to the department of revenue, on forms provided for that purpose, showing therein an itemized schedule of all such gifts, the name and residence of each donee and the actual

value of the gift to each, the relationship of each of such persons to the donor and any other information which the department of revenue may require. Such returns shall be filed on or before the fifteenth day of March following the close of the calendar year. The department of revenue may grant a reasonable extension of time for filing a report whenever in its judgment good cause exists. (1937, c. 127, s. 609.)

Art. 5B. Schedule H. Intangible Personal Property

§ 7880(156)oo. Intangible personal property.—Taxes levied in this article for the maintenance of the public schools of the state, under authority of section six, Article V, of the Constitution.

Intangible personal properties defined and classified by this chapter, with the exceptions hereinafter made, are hereby segregated for exclusive state taxation after the year one thousand nine hundred thirty-seven and at the same time stated in this article and shall be taxed as hereinafter provided. Nothing herein contained shall affect the taxability of those subjects of taxation in the year one thousand nine hundred thirty-seven nor the listing of same for the year one thousand nine hundred thirty-seven in the manner provided in the Machinery Act. (1937, c. 127, s. 700.)

§ 7880(156)pp. Bank deposits.—All money on deposit with any commercial, industrial, savings bank or trust company or other corporation doing a banking business, including certificates of deposit of any such bank, trust company or other corporation doing a banking business, and postal savings deposits, whether such money be actually in or out of this state, and belonging to or held in trust for a resident of this state, and including non-residents having a business situs in this state, shall be subject to an annual tax, which is hereby levied, of ten cents (10c) on every one hundred dollars (\$100.00) of the actual value thereof without deduction for any indebtedness or liabilities of the taxpayer. For the purpose of determining the amount of deposits subject to this tax, every such commercial, industrial or savings bank, trust company or other corporation doing a banking business shall set up the credit balance of each depositor on the fifteenth day of each September, December, March and June in the calendar year, and the average of such quarterly credit balances shall constitute the amount of deposit of each depositor subject to the tax levied in this section. The tax herein levied shall not apply to deposits by one bank in another bank, nor to deposits by federal, state or local governments, or agencies of such governmental units. Accounts showing average quarterly balances for the year of less than one hundred dollars (\$100.00) shall be disregarded.

The taxes assessed upon bank deposits in this section shall be paid by the cashier, secretary, treasurer or other officer or officers of every such commercial, industrial, savings bank, trust company or other corporation doing a banking business by report and payment to the state department of revenue on March fifteenth, one thousand nine hundred thirty-eight, for the previous calendar year, and annually thereafter. As agent for the depositor any taxes so paid on such de-

posits shall be recovered from the owners thereof by such commercial, industrial, savings bank, trust company or other corporation doing a banking business, and shall be deducted from the account of the depositor on December thirty-first, one thousand nine hundred thirty-seven, and annually thereafter or on such date after the thirty-first day of December as in the ordinary course of business it becomes convenient to make such charge. The tax on deposits represented by time certificates that have been transferred to another holder shall be chargeable to the original depositor unless such depositor has given notice to the bank of transfer of such certificate of deposit. Accounts that have been closed during the year, leaving no credit balance against which the tax can be charged may be reported separately to the department of revenue, and shall then become a charge directly against the depositor for the amount of tax levied herein, and such tax may be collected by the department of revenue from the depositor with the same remedies to enforce payment provided in this act to enforce the payment of other taxes levied in this act, but the depository bank, company or corporation shall not be liable for the payment thereof, and shall then become a charge directly against the depositor for the amount of tax levied herein, and such tax may be collected by the department of revenue from the depositor with the same remedies to enforce payment provided in this act to enforce the payment of other taxes levied in this act. (1937, c. 127, s. 701.)

§ 7880(156)pp1. Department of revenue authorized to relieve banks of duty of collecting tax on intangibles, held by clerks of courts.—Banks now charged with the duty of collecting tax on intangibles which are held by the clerks of the courts of North Carolina, whether on deposit or otherwise, in a fiduciary capacity, levied under Schedule H of the one thousand nine hundred and thirty-seven Revenue Act [§ 7880(156)oo et seq.], shall be relieved of the duty of collecting said tax when so authorized by the revenue department of the state of North Carolina by certificate based upon the application of any clerk of any court of the state of North Carolina.

The various clerks of the courts of the state of North Carolina shall keep a record of, compute, collect, and remit the tax on such intangibles to the commissioner of revenue, as provided in Schedule H of the one thousand nine hundred and thirty-seven Revenue Act.

The various clerks of the courts of the state shall be held liable under their official bonds for the collection and payment to the commissioner of revenue of the tax levied under Schedule H of the one thousand nine hundred and thirty-seven Revenue Act. (1937, c. 229, ss. 1-3.)

§ 7880(156)qq. Money on hand.—All money on hand on December thirty-first, one thousand nine hundred thirty-seven, and annually thereafter, held by any resident of this state, personal or corporate, and including non-residents having a business situs in this state, as defined in this article, shall be subject to a tax that is hereby annually levied of twenty cents (20c) on every one hundred dollars (\$100.00) of the amount of such money on hand in excess of three hundred dollars (\$300.00). (1937, c. 127, s. 702.)

§ 7880(156)rr. Accounts receivable.—All accounts receivable of every resident of this state, personal and corporate, held on December thirty-first, one thousand nine hundred thirty-seven, and annually thereafter, in excess of current bills payable, and not including in bills payable indebtedness on account of capital outlay, shall be subject to a tax, which is hereby annually levied, of twenty-five cents (25c) on every one hundred dollars (\$100.00) of the face value of the excess of accounts receivable above current accounts and bills payable, and in excess of three hundred dollars (\$300.00) of the net amount of such accounts. (1937, c. 127, s. 703.)

§ 7880(156)ss. Matured insurance policies; funds held by fiduciaries.—All sums left on deposit with insurance companies by a resident of this state, the principal of which is subject to withdrawal at the option of the party or parties entitled to receive it after stipulated notice, or evidences of debt by building and loan associations other than obligations to and on account of shares of stock to shareholders taxable under section 7880(69) and belonging to a resident of this state, and/or money held as trust funds by clerks of superior courts, executors, administrators, trustees, or other fiduciaries shall be subject to a tax, which is hereby annually levied, of twenty-five cents (25c) on every one hundred dollars (\$100.00) of the amount of such obligations. Taxes under this section are levied as of December thirty-first, one thousand nine hundred thirty-seven, and annually thereafter. So much of funds held by clerks of superior courts, executors, administrators, trustees or other fiduciaries as are on deposit in a bank in this state and taxable under section 7880(156)pp shall be exempt from the tax levied in this section.

All insurance companies and building and loan associations doing business in this state, clerks of superior courts, executors, administrators, trustees or other fiduciaries shall report to the department of revenue on March fifteenth, one thousand nine hundred thirty-eight, and annually thereafter, all sums in their charge that are made taxable under this section and pay the tax on such sums. All such insurance companies, building and loan associations, clerks of superior courts, executors, administrators, trustees or other fiduciaries shall recover from the owners thereof the amount of taxes so paid by a charge against the account of the depositor which shall be made on December thirty-first, one thousand nine hundred thirty-seven, and annually thereafter, or at such other time as in the ordinary course of business may be convenient, or by deduction, with interest, from any dividends or distribution that may thereafter be made.

The taxes levied under this section on building and loan associations shall not apply to loans made to such associations by federal home loan banks or other banks. (1937, c. 127, s. 704.)

§ 7880(156)tt. Bonds, notes, and other evidences of debt.—All bonds (except bonds or obligations, direct or indirect, of the United States, bonds of the state of North Carolina, and bonds of counties, cities, and towns, or other political sub-divisions of this state), notes, and other evidences of debt, including bonds of states other than North Carolina, bonds of counties, cities,

and towns located outside of the state of North Carolina, bonds of railroad, industrial, commercial and other corporations, bonds of individuals, and all demands and claims, however evidenced, whether secured by mortgage, deed of trust, judgment or otherwise, or not so secured, but not including current accounts receivable, and belonging to a resident of this state on December thirty-first, one thousand nine hundred thirty-seven and annually thereafter, shall be subject to a tax, which is hereby levied, of forty cents (40c) on every one hundred dollars (\$100.00) of the fair market value thereof, in excess of three hundred dollars (\$300.00) in value of such securities. Evidences of debt owing by the taxpayer, or if reported by an agent of the owner of such securities owing by such owner, other than current accounts payable, taxable under section 7880-(156)rr, may be deducted from the value of securities taxable under this section. The evidences of debt taxable under this section shall not apply to building and loan associations, banks or insurance companies. If evidences of debt are held by a subsidiary corporation, the indebtedness that may be deducted from such evidences of debt shall be the proportion of indebtedness of the parent corporation which such indebtedness bears to the total assets of the parent corporation. The term "subsidiary corporation" as used in this section shall mean any corporation more than fifty per cent (50%) of the stock of which is held by another corporation.

If such securities are reported by or in behalf of the corporation owning securities, both within and without the state of North Carolina, such evidences of debt may be deducted only in the proportion which the value of the securities taxable under this section bears to the total value of the securities owned by the corporation.

In every action or suit in any court for the collection of any bonds, notes or other evidences of debt, the plaintiff shall be required to allege in his pleadings or to prove at any time before final judgment is entered, (1) that such bonds, notes or other evidences of debt have been assessed for taxation for each and every tax year, under the provisions of this article, during which he was the owner of same, not exceeding five years prior to that in which the suit or action is brought; or (2) that such bonds, notes or other evidences of debt constituted a part of the capital employed in the business of such taxpayer and were taxed as such; or (3) that the suitor has not paid, or is unable to pay the taxes and penalties, but is willing for the same to be paid out of the first recovery on the evidence of debt; or (4) that the bond, note or other evidence of debt sued upon is not taxable hereunder in the hands of the plaintiff.

But the title to real estate heretofore or hereafter sold under a deed of trust shall not be drawn in question upon the ground that the holder of the notes secured by such deed of trust did not list the same for taxation.

When in any action at law or suit in equity it is ascertained that there are unpaid taxes and penalties on the evidence of debt sought to be enforced, and the suitor makes it appear to the court that he has not paid or is unable to pay these taxes and penalty, but is willing for the same to be paid out of the first recovery on the

evidence of debt, the court shall have authority to enter as a part of any judgment or decretal order in said proceedings that the amount of taxes and penalty due and owing shall be paid to the proper officer out of the first collection on said judgment or decree. (1937, c. 127, s. 705.)

§ 7880(156)uu. Shares of stock.—All shares of stock of corporations or joint stock companies held by residents of this state, except stock in such corporations as pay a franchise and property tax in this state, and the tax upon the proportionate part of their income earned in this state as determined under section 7880(128), and except stock in banks, banking associations, trust companies, insurance companies, and building and loan associations which are otherwise taxed shall be subject to a tax, which is hereby annually levied, of thirty cents (30c) on every one hundred dollars (\$100.00) of the fair market value thereof as of December thirty-first, one thousand nine hundred thirty-seven, and annually thereafter, in excess of three hundred dollars (\$300.00). Indebtedness incurred directly for the purchase of shares of stock, and for the payment of which the stock is pledged as collateral, may be deducted from the total value of such shares. (1937, c. 127, s. 706.)

§ 7880(156)vv. Taxes due and payable.—All taxes levied in this article shall be due and payable on the fifteenth day of March, one thousand nine hundred thirty-eight, and annually thereafter, with respect to tax liability that shall accrue under each section of this article, on intangibles owned by the taxpayer on the thirty-first day of December next preceding. Every person, firm, or corporation liable for a tax levied under this article, either as principal or agent, shall make report of such tax liability to the state department of revenue on March fifteenth, one thousand nine hundred thirty-eight, and annually thereafter, and shall pay the amount of tax due at the time of making such report. All such reports shall be subject to all the rules and regulations, in so far as they apply, set out in Article IV, Schedule D, of this act [§ 7880(124) et seq.], with respect to income taxes and including the obligation of the department of revenue to audit such reports with respect to under or over-payment; shall be subject to the same penalties for delay or failure to make reports; to the same rights of the department of revenue to investigate the books and records of any taxpayer, or agent of the taxpayer, and shall be subject to hearings and appeals in all respects as provided for income taxes in Article IV, Schedule D, of this act. (1937, c. 127, s. 707.)

§ 7880(156)ww. Non-residents. — Every non-resident person, every foreign corporation, and every partnership, consisting in whole or in part of non-resident persons doing business in this state, is hereby declared to have a domicile within this state, and so much of the notes, mortgages, accounts receivable, and bank deposits of such non-resident in excess of current bills payable and evidences of debt acquired in the conduct of and as a part of the business carried on in this state, shall be reported by and taxed to such person, firm, or corporation, in the same manner and to

the same extent as if such person, firm, or corporation were a resident of this state.

A resident of this state having an established business in another state shall not be taxable in this state on intangibles located in and incident to the conduct of the business located in another state. (1937, c. 127, s. 708.)

§ 7880(156)xx. Moneyed capital coming into competition with the business of national banks.—

All moneyed capital coming into competition with the business of national banks: Provided, that bonds, notes or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital within the meaning of this section.

On all moneyed capital defined by this section there is hereby annually levied a tax at the same rate as is assessed upon the shares of national banks located in this state at the place of residence of such national banks, less deduction on real estate otherwise taxed in this state, to the same extent and under the same corresponding conditions as this deduction is allowed in the assessment of such shares of national banks located in this state. (1937, c. 127, s. 709.)

§ 7880(156)yy. Conversion of intangible personal property to evade taxation not to defeat assessment and collection of proper taxes.—Any person, firm, or corporation who shall, for the purpose of evading taxation under the laws of this state, within thirty days prior to the first day of any tax year, either directly or indirectly, convert any intangible personal property taxable under the laws of this state, or with like intent shall, either directly or indirectly, convert such intangible personal property into a form of property which is taxable by this state at a lower rate than the intangible personal property so converted, shall be taxable on such intangible personal property as if such conversion had not taken place, and the fact that such person, firm, or corporation within thirty days after the first day of the tax year, either directly or indirectly, converts such property non-taxable by this state or taxable at the lower rate by this state into intangible personal property taxable at the higher rate shall be prima facie evidence of intent to evade taxation by this state, and the burden of proof shall be upon such person, firm, or corporation to show that the first conversion was for a bona fide purpose of investment, and not for the purpose of evading taxation by this state. (1937, c. 127, s. 710.)

§ 7880(156)zz. Forms for report.—The department of revenue shall prepare appropriate forms for reports to be made under the several sections of this article, and such forms shall be furnished taxpayers upon application or distributed in the same manner as blank forms for income tax returns. To the extent that the department of revenue may find it expedient to do so, forms for reports required to be made under the several sections of this article may be combined with the forms of income tax returns. (1937, c. 127, s. 711.)

§ 7880(156)aaa. Protection for taxpayers mak-

ing complete return.—Taxpayers making a complete return on March fifteenth, one thousand nine hundred thirty-eight, and annually thereafter, of all their holdings of intangible personal property under this article shall not thereafter be held liable for failure to list such intangible property in previous years, and the taxes levied in this article shall be in lieu of all other property taxes on such intangible personal property, from and after March fifteenth, one thousand nine hundred thirty-eight. (1937, c. 127, s. 712.)

§ 7880(156)bbb. Penalties.—All penalties levied in Article IV of this act [§ 7880(124) et seq.] with respect to report and payment of income taxes shall apply to taxes levied in this article, and in addition thereto the penalty for failure to report intangibles taxable under this article shall be subject to a penalty of one hundred per cent (100%) of the amount of the tax. (1937, c. 127, s. 713.)

§ 7880(156)ccc. Institutions exempted.—None of the taxes levied in this article shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor (except sections 7880(156)pp and 7880(156)ss to life insurance companies reporting premiums to the insurance commissioner and paying a tax thereon under section 7880(116), nor (except section 7880(156)pp) to the purchase of securities held as a separate fund by a trustee and representing the proceeds of life insurance policies matured by the death of the insured where the beneficiaries do not have power to withdraw principal until the happening of a future event, nor (except section 7880(156)ss) to building and loan associations paying a tax under section 7880(69), nor to evidences of debt held by commercial, industrial or savings banks and trust companies representing investment of funds held on deposit. (1937, c. 127, s. 714, c. 249, s. 18.)

§ 7880(156)ddd. Separate record by counties; reports to state board of assessment; distribution to counties and cities.—The commissioner of revenue shall keep a separate record by counties of taxes collected under this article, and shall not later than the tenth day of July in one thousand nine hundred thirty-eight, and annually thereafter, submit to the state board of assessment an accurate account of taxes collected under these sections, showing separately the amounts collected in each county of the state. The state board of assessment shall examine such reports and, if found to be correct, shall certify a copy of same to the state auditor and state treasurer. Fifty per cent (50%) of the total amount of such revenue shall be distributed to the counties and cities of the state on the following basis:

The amount distributable to each county and to the municipalities therein from the revenue collected under sections 7880(156)qq, 7880(156)rr, 7880(156)tt and 7880(156)uu shall be determined upon the basis of the amounts collected in each county. The amount distributable to each county and municipalities therein from the revenue collected under sections 7880(156)pp and 7880(156)ss shall be determined upon the basis of population in each county as shown by the latest federal decennial census. The amounts so allocated to each county shall in turn be divided between the

county and all municipalities therein in proportion to the total amount of ad valorem taxes levied by each on real and tangible personal property during the fiscal year preceding such distribution. Upon certification by the state board of assessment of the allocations herein provided for, it shall be the duty of the state auditor to issue a warrant on the state treasurer to the treasurer or other officer of each such county and municipality authorized to receive public funds in the amount so allocated to each such county and municipality. It shall be the duty of each such county and municipality to report to the state board of assessment such information as it may request for its guidance in making said allotments; and upon failure of any such county or municipality to make such report within the time prescribed by said state board of assessment, said board may disregard said defaulting unit in making said allotments.

The amounts distributed to the counties and cities of the state shall be used for the payment of principal or interest on indebtedness or expenses incurred on account of providing facilities and equipment necessary for the maintenance of the constitutional six months public school term. (1937, c. 127, s. 715.)

§ 7880(156)eee. Provision for administration.—For the efficient administration of this article an appropriation is hereby made for the use of the department of revenue, in addition to the appropriation in the Appropriation Bill of a sum equal to four per cent (4%) of the total revenues collected under this article to be expended under allotments made by the director of the budget of such part of the whole appropriation as may be found necessary for the administration of this article.

The director of the budget may make estimates of the yield of revenue under this article and make advance appropriations based upon such estimate and to provide for the necessary expense of providing materials, supplies and other needful expenses to be incurred prior to the actual collection of taxes made under and by virtue of this article.

The director of the budget may make such advance allotments from such estimates of revenue yield as he may find proper for the convenient and efficient administration of this article.

Out of the amounts which may become due and payable to the counties and cities there shall be deducted the proportionate cost of collection, enforcement and administration the percentage and cost as determined by the director of the budget. (1937, c. 127, s. 716.)

Art. 6. Schedule I. General Administration—Penalties

§ 7880(157). Failure of a firm, corporation, public utility and/or public service corporation to file report.—If any person, firm, or corporation required to file a report under any of the provisions of Schedules B and C of this act [§ 7880(30) et seq.] fails, refuses, or neglects to make such report as required herein within the time limited in said schedules for making such report he or it shall pay a penalty of ten dollars (\$10.00) for each day's omission. (1937, c. 127, s. 800.)

§ 7880(158). Charter canceled for failure to report.—If a corporation required by the provisions of this act to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this state, or as a foreign corporation domesticated in or doing business in this state, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return, or for paying such tax or fee, the commissioner of revenue shall certify such fact to the secretary of state. The secretary of state shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this state by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by him, and also shall immediately certify such suspension to the clerk of superior court of the county in which the principal office or place of business of such corporation is located in this state. The clerk of superior court shall thereupon make appropriate entry upon the records of his office indicating suspension of the corporate powers of the corporation in question. Provided, that such cancellation of charter as hereinbefore provided shall not be effective as to parties dealing with said corporation without actual notice thereof until a copy of such cancellation shall be filed in the office of the clerk of the superior court of the county in which said corporation has its principal office in this state.

Clerks of the superior court may charge fifty (50c.) cents for filing such certificate of cancellation, collectible from such corporation when a certificate of restoration as provided for in section 7880(160) is filed with said clerk of superior court. (1937, c. 127, s. 801, c. 215.)

Editor's Note. — Public Laws 1937, c. 215, adding the proviso and the last sentence to this section purports to amend same section in the original Code as codified from Public Laws 1935.

§ 7880(159). Penalty for exercising corporate functions after cancellation or suspension of charter.—Any person, persons or corporation who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are suspended, as provided in any section of this act, shall pay a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), to be recovered in an action to be brought by the commissioner of revenue in the superior court of Wake county. Any corporate act performed or attempted to be performed during the period of such suspension shall be invalid and of no effect. (1937, c. 127, s. 802.)

§ 7880(160). Corporate rights restored.—Any

corporation whose articles of incorporation or certificate of authority to do business in this state have been suspended by the secretary of state, as provided in section 7880(158), or similar provisions of prior Revenue Act, upon the filing, within ten years after such suspension of cancellation under previous acts, with the secretary of state, of a certificate from the commissioner of revenue that it has complied with all the requirements of this act and paid all state taxes, fees, or penalties due from it, and upon payment to the commissioner of revenue to be transferred to the secretary of state an additional penalty of ten dollars (\$10.00) to cover cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by him under the provisions of section 7880(158) or similar provisions of prior Revenue Acts, and shall issue his certificate entitling such corporation to exercise again its rights, privileges, and franchises, and certify such reinstatement to the clerk of superior court in the county in which the principal office or place of business of such corporation is located, and he shall cancel from his records the entry showing suspension of corporate privileges. (1937, c. 127, s. 803.)

§ 7880(161). Officers, agents, and employees; misdemeanor failing to comply with tax law.—If any officer, agent, and/or employee of any person, firm, or corporation subject to the provisions of this act shall wilfully fail, refuse, or neglect to make out, file, and/or deliver any reports or blanks, as required by such law, or to answer any question therein propounded, or to knowingly and wilfully give a false answer to any such question wherein the fact inquired of is within his knowledge, or upon proper demand to exhibit to such commissioner of revenue or any person duly authorized by such commissioner any book, paper, account, record, memorandum of such person, firm, or corporation in his possession and/or under his control, he shall be guilty of a misdemeanor and fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense. (1937, c. 127, s. 804.)

§ 7880(162). Aiding and/or abetting officers, agents, or employees in violation of this act a misdemeanor.—If any person, firm, or corporation shall aid, abet, direct, cause or procure any of his or its officers, agents, or employees to violate any of the provisions of this act, he or it shall be guilty of a misdemeanor, and fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense. (1937, c. 127, s. 805.)

§ 7880(163). Each day's failure a separate offense.—Every day during which any person, firm, or corporation subject to the provisions of this act, or any officer, agent, or employee thereof, shall wilfully fail, refuse, or neglect to observe and comply with any order, direction, or mandate of the commissioner of revenue, or to perform any duty enjoined by this act, shall constitute a separate and distinct offense. (1937, c. 127, s. 806.)

§ 7880(164). Penalty for bad checks.—When

any uncertified check is tendered in payment of any obligation to the department of revenue, and such check shall have been returned to the office of the commissioner of revenue unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, then and in that event an additional tax shall be imposed equal to ten per cent (10%) of the tax due; and in no case shall the increase of said tax because of such failure be less than one dollar (\$1.00) nor exceeding two hundred dollars (\$200.00), and the said additional tax shall not be waived or diminished by the commissioner of revenue. This section shall also apply to all taxes levied or assessed by the state. (1937, c. 127, s. 807.)

§ 7880(165). Discretion of commissioner over penalties.—The commissioner of revenue shall have power, upon making a record of his reasons therefor, to reduce or waive any penalties provided for in this act, except the penalty provided in section 7880(164) relating to unpaid checks. (1937, c. 127, s. 808.)

Remedies

§ 7880(166). Tax a debt.—Every tax imposed by this act, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a debt from the person, firm, or corporation liable to pay the same to the state of North Carolina. (1937, c. 127, s. 809.)

§ 7880(167). Action for recovery of taxes.—Action may be brought at any time and in any court of competent jurisdiction in this state or other state, in the name of the state and at the instance of the commissioner of revenue, to recover the amount of any taxes, penalties, and interest due under this act. This remedy is in addition to all other remedies for the collection of said taxes and shall not in any respect abridge the same. Any judgment shall be declared to have such preference and priority against the property of the defendant as is provided by law for taxes levied by this act, and free from any claims for home- stead or personal property exemption of the defendant therein. (1937, c. 127, s. 810.)

§ 7880(168). Tax upon settlement of fiduciary's account.—1. No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the commissioner of revenue and the receipt for the amount of tax herein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the commissioner of revenue, with the approval of the attorney general, may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this act, and the payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates. (1937, c. 127, s. 811.)

§ 7880(168)a. Lien of state taxes.—The taxes imposed by this act shall constitute a lien upon the real estate of all persons, firms, corporations, or concerns chargeable with the tax, located within this state.

In the settlement of the estate of any decedent where by any order of court, or other proceeding, the real estate of the decedent has been sold to make assets to pay debts, such sale shall not have the effect of extinguishing the lien upon the land so sold for state taxes, nor shall the same be postponed in any manner to the payment of any other claim or debt against the estate, save funeral expenses and cost of administration.

Whenever the property of any taxpayer liable to any tax imposed by this act or under its authority shall be taken into receivership, the lien of the taxes upon the real estate shall not thereby be in any manner disturbed, and the personal property of the taxpayer liable to said tax upon which there is no prior specific lien shall be subject to a lien for the taxes imposed by this act, or under its authority, from the time the receivership went into effect, subject to prior payment of costs of the receivership only.

The provisions of this section shall not have the effect of releasing any lien for state taxes imposed by other law, nor shall they have the effect of postponing the payment of the said state taxes or depriving the said state taxes of any priority in order of payment provided in any other statute under which payment of the said taxes may be required. (1937, c. 127, s. 811½.)

§ 7880(169). Warrant for the collection of taxes.

—If any tax imposed by this act, or any other tax levied by the state and payable to the commissioner of revenue, or any portion of such tax be not paid within thirty days after the same becomes due and payable, and after the same has been assessed, the commissioner of revenue shall issue an order under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the commissioner of revenue the money collected by virtue thereof by a time to be therein specified, not less than sixty days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

In addition to the remedy herein provided, the commissioner of revenue is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to

docket the said certificate and index the same on the cross-index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and on personalty only from the date of the levy on such personalty, and upon the execution thereon no homestead or personal property exemption shall be allowed.

The commissioner of revenue, and his regularly appointed deputies, shall have the same power as is hereby given to the sheriffs of the several counties to execute any warrant issued for the collection of taxes as herein provided in any of the counties of the state. Whenever the said warrant is to be executed by a deputy of the commissioner of revenue, it shall be directed to him, or any other deputy authorized hereby to execute the same, and he shall have, with respect thereto, all the power and authority now and heretofore exercised by the sheriffs of the various counties with respect to executions, and, in addition thereto, the power and authority herein given him. When such warrants for collection of taxes are executed by the commissioner of revenue, or a deputy commissioner of revenue, no compensation to such commissioner or deputy by way of fee or otherwise shall be allowed.

The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes. (1937, c. 127, s. 812.)

§ 7880(170). Taxes recoverable by action.—Upon the failure of any corporation to pay the taxes, fees, and penalties prescribed by this act, the commissioner of revenue may certify same to the sheriff of the county in which such company may own property, for collection as provided in this act; and if collection is not made, such taxes or fees and penalties thereon may be recovered in an action in the name of the state, which may be brought in the superior court of Wake county, or in any county in which such corporation is doing business, or any county in which such corporation owns property. The attorney general, on request of the commissioner of revenue, shall institute such action in the superior court of Wake county, or of any such county as the commissioner of revenue may direct. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered stands charged on the delinquent duplicate of the commissioner of revenue, and that the same has been unpaid for the period of thirty days after having been placed thereon. (1937, c. 127, s. 813.)

§ 7880(171). Additional remedies.—In addition to all other remedies for the collection of any taxes or fees due under the provisions of this act, the attorney general shall, upon request of the commissioner of revenue, whenever any taxes, fees, or penalties due under this act from any public utility (not an agency of interstate commerce) or corporation shall have remained unpaid for a period of ninety days, or whenever any corporation or public utility (not an agency of interstate commerce) has failed or neglected for ninety days

to make or file any report or return required by this act, or to pay any penalty for failure to make or file such report or return, apply to the superior court of Wake County, or of any county in the state in which such public utility (not an agency of interstate commerce) or corporation is located or has an office or place of business, for an injunction to restrain such public utility (not an agency of interstate commerce) or corporation from the transaction of any business within the state until the payment of such taxes or fees and penalties thereon, or the making and filing of such report or return and payment of penalties for failure to make or file such report or return, and the cost of such application, which shall be fixed by the court. Such petition shall be in the name of the state; and if it is made to appear to the court, upon hearing, that such public utility (not an agency of interstate commerce) or corporation has failed or neglected, for ninety days, to pay such taxes, fees, or penalties thereon, or to make and file such reports, or to pay such penalties, for failure to make or file such reports or returns, such court shall grant and issue such injunction. (1937, c. 127, s. 814.)

§ 7880(172). Failure of sheriff to execute order.

—If any sheriff of this state shall wilfully fail, refuse, or neglect to execute any order directed to him by the commissioner of revenue and within the time provided in this act, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer. (1937, c. 127, s. 815.)

§ 7880(173). Actions, when tried.—All actions or processes brought in any of the superior courts of this state, under provisions of this act, shall have precedence over any other civil causes pending in such courts, and the courts shall always be deemed open for trial of any such action or proceeding brought therein. (1937, c. 127, s. 816.)

General Provisions

§ 7880(174). Taxes payable in national currency; for what period, and when a lien.—The taxes herein designated and levied shall be payable in the existing national currency. State, county, and municipal taxes levied for any and all purposes pursuant to this act shall be for the fiscal year in which they become due, except as otherwise provided, and the lien of such taxes shall attach to all real estate of the taxpayer within the state, which shall attach annually on the date that such taxes are due and payable, and shall continue until such taxes, with any interest, penalty, and costs which shall accrue thereon, shall be paid. (1937, c. 127, s. 817.)

Applied in *Winston-Salem v. Powell Paving Co.*, 7 F. Supp. 424.

§ 7880(175). Municipalities not to levy income and inheritance tax.—No city, town, township, or county shall levy any tax on income or inheritance. (1937, c. 127, s. 818.)

§ 7880(176). State taxes.—The taxes levied in this act are for the expenses of the state government, the appropriations to its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt

of the state, for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the state treasurer.

The taxes levied under authority of section four hundred ninety-two of chapter four hundred twenty-seven of the Public Laws of one thousand nine hundred thirty-one, and remaining unpaid, shall be collected in the same manner as other county taxes and accounted for in the same manner as other taxes under the Daily Deposit Act. The county treasurer or other officer receiving such taxes in each county shall remit to the treasurer of the state on the first and fifteenth days of each month all taxes collected up to the time of such remittance under the levy therein provided for, and such remittance to the state treasurer shall also include the proportion of all poll taxes collected required by the constitution of the state to be used for educational purposes.

The tax levy therein provided for shall be subject to the same discounts and penalties as provided by law for other county taxes, and there shall be allowed the same percentage for collecting such taxes as for other county taxes. The obligation to the state under the levy therein provided for shall run against all taxes that become delinquent; and with respect to any property that may be sold for taxes, any public officer receiving such delinquent taxes, when and if such property may be redeemed or such tax obligations in any manner satisfied, shall remit such proportionate part of such tax levy to the state treasurer within fifteen days after receipt of same. At the end of each fiscal year the county accountant shall furnish the state treasurer a statement of the total amount of taxes levied in accordance with the provisions of this section, that are uncollected at the end of the fiscal year. (1937, c. 127, s. 819.)

§ 7880(177). Tax exemptions repealed.—Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations, other than the bonds of this state and of the United States government, shall be liable to taxation, except property belonging to the United States and to municipal corporations, and property held for the benefit of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever, held or used for investment, speculation, or rent, shall be exempt, other than bonds of this state and of the United States government, unless said rent or the interest on or income from such investment shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions. (1937, c. 127, s. 819.)

Enumerated Exemption Exclusive of Others.—

In accord with original. See *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6.

Property is liable for county taxes where it is not used by the city for a governmental purpose, and therefore does not come within the constitutional provision for the exemption of property from taxation (N. C. Const. Art. V, sec. 5), or within the scope of this section enacted pursuant thereto. *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6

§ 7880(177)b. Obsolete.

Editor's Note.—Public Laws 1937, c. 61, repealed Public Laws 1935, c. 480, exempting Gaston county from the provisions of this section.

§ 7880(178). Law applicable to foreign corporations.—All foreign corporations, and the officers and agents thereof, doing business in this state, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers. (1937, c. 127, s. 820.)

§ 7880(179). Information must be furnished.

Each company, firm, corporation, person, association, co-partnership, or public utility shall furnish the commissioner of revenue, in the form of returns prescribed by him, all information required by law and all other facts and information, in addition to the facts and information in this act specifically required to be given, which the commissioner of revenue may require to enable him to carry into effect the provisions of the laws which the said commissioner is required to administer, and shall make specific answers to all questions submitted by the commissioner of revenue. (1937, c. 127, s. 821.)

§ 7880(180). Returns required.—Any company, firm, corporation, person, association, co-partnership, or public utility receiving from the commissioner of revenue any blanks, requiring information, shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure.

The answers to such questions shall be verified under oath by such persons, or by the president, secretary, superintendent, general manager, principal accounting officer, partner, or agent, and returned to the commissioner of revenue at his office within the period fixed by the commissioner of revenue. (1937, c. 127, s. 822.)

§ 7880(181). Personal liability of officers, trustees, or receivers.—Any officer, trustee, or receiver of any corporation required to file report with the commissioner of revenue, having in his custody funds of the corporation, who allows said funds to be paid out or distributed to the stockholders of said corporation without having satisfied the state board of assessment or commissioner of revenue for any state taxes which are due or have accrued, shall be personally responsible for the payment of said tax, and in addition thereto shall be subject to a penalty of not more than the amount of the tax, nor less than twenty-five per cent (25%) of such tax found to be due or accrued. (1937, c. 127, s. 823.)

§ 7880(182). Blanks furnished by commissioner of revenue.—The commissioner of revenue shall cause to be prepared suitable blanks for carrying out the purposes of the laws which he is required to administer, and, on application, furnish such blanks to each company, firm, corporation, person, association, co-partnership, or public utility subject thereto. (1937, c. 127, s. 824.)

§ 7880(183). Commissioner of revenue to keep records.—The commissioner of revenue shall keep

books of account and records of collections of taxes as may be prescribed by the director of the budget; shall keep an assessment roll for the taxes levied, assessed, and collected under this act, showing in same the name of each taxpayer, the amount of tax assessed against each, when assessed, the increase or decrease in such assessment; the penalties imposed and collected, and the total tax paid; and shall make monthly reports to the director of the budget and to the auditor and/or state treasurer of all collections of taxes on such forms as prescribed by the director of the budget. (1937, c. 127, s. 825.)

§ 7880(184). Publication of statistics.—The commissioner of revenue shall prepare and publish annually statistics reasonably available, with respect to the operation of this act, including amounts collected, classifications of taxpayers, income and exemptions, and such other facts as are deemed pertinent and valuable. (1937, c. 127, s. 826.)

§ 7880(185). Powers of commissioner of revenue.—The commissioner of revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due by any taxpayer under this act, shall have the power to examine or cause to be examined, by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer or of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons. (1937, c. 127, s. 827.)

§ 7880(186). Secrecy required of officials—penalty for violation.—(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of revenue, any deputy, agent, clerk, other officer, employee, or former officer or employee, to divulge and make known in any manner the amount of income, income tax or other taxes, set forth or disclosed in any report or return required under this act.

(b) Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the governor, attorney general, or their duly authorized representative; or the inspection by a legal representative of the state of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this act; nor shall the provisions of this section prohibit the department of revenue furnishing information to other governmental agencies, of persons and firms properly licensed under Schedule B of this act [§ 7880(30) et seq.]. The department of revenue may exchange information with the officers of organized associations of taxpayers under Schedule B of this act with respect to parties liable for such taxes and as to parties who have paid such license taxes.

(c) Reports and returns shall be preserved for three years, and thereafter until the commissioner of revenue shall order the same to be destroyed.

(d) Any person, officer, agent, clerk, employee, or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor, and fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00) and/or imprisoned, in the discretion of the court; and if such offending person be an officer or employee of the state, he shall be dismissed from such office or employment, and shall not hold any public office or employment in this state for a period of five years thereafter.

(e) Notwithstanding the provisions of this section, the commissioner of revenue may permit the commissioner of internal revenue of the United States, or the revenue officer of any state imposing any of the taxes imposed in this act, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish such officer or his authorized agent an abstract of the report or return of any taxpayer; or supply such officer with information concerning any item contained in any report or return, or disclosed by the report of any investigation of such report or return of any taxpayer. Such permission, however, shall be granted or such information furnished to such officer, or his duly authorized representative, only if the statutes of the United States or of such other state grants substantially similar privilege to the commissioner of revenue of this state or his duly authorized representative. (1937, c. 127, s. 828.)

§ 7880(187). Deputies and clerks.—The commissioner of revenue may appoint such deputies, clerks and assistants under his direction as may be necessary to administer the laws relating to the assessment and collection of all taxes provided for in this act; may remove and discharge same at his discretion, and shall fix their compensation within the rules and regulations prescribed by law. (1937, c. 127, s. 829.)

§ 7880(188). Commissioner and deputies to administer oaths.—The commissioner of revenue and such deputies as he may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person in respect to any return or report required by this act or under the rules and regulations of the commissioner of revenue, and shall have access to the books and records of any person, firm, corporation, county, or municipality in this state. (1937, c. 127, s. 830.)

§ 7880(189). Rules and regulations.—The commissioner of revenue may, from time to time, make, prescribe, and publish such rules and regulations, not inconsistent with this act, as may be needful to enforce its provisions. (1937, c. 127, s. 831.)

§ 7880(190). Time for filing reports extended.—The commissioner of revenue, when he deems the same necessary or advisable, may extend to any person, firm, or corporation or public utility a further specified time within which to file any report required by law to be filed with the commissioner of revenue, in which event the attaching or

taking effect of any penalty for failure to file such report or to pay any tax or fee shall be extended or postponed accordingly. Interest at the rate of six per cent (6%) per annum from the time the report or return was originally required to be filed to the time of payment shall be added and paid. (1937, c. 127, s. 832.)

§ 7880(191). Construction of the act; population.—It shall be the duty of the commissioner of revenue to construe all sections of this act imposing either license, inheritance, income, or other taxes. Such decisions by the commissioner of revenue shall be prima facie correct, and a protection to the officers and taxpayers affected thereby. Where the license tax is graduated in this act according to the population, the population shall be the number of inhabitants as determined by the last census of the United States government: Provided, that if any city or town in this state has extended its limits since the last census period, and thereafter has taken a census of its population in these increased limits by an official enumeration, either through the aid of the United States government or otherwise, the population thus ascertained shall be that upon which the license tax is to be graduated. (1937, c. 127, s. 833.)

The Commissioner of Revenue is given authority to administratively construe, in the first instance, all sections of the revenue law. *Powell v. Maxwell*, 210 N. C. 211, 186 S. E. 326.

§ 7880(192). When increases operative.—In all instances in which the taxes are increased or decreased or new taxes imposed under Schedules B and C of this act [§ 7880(30) et seq.], and which shall become due between the ratification of this act and the first day of June, one thousand nine hundred and thirty-seven, such increase or decrease shall become operative only from and after the thirty-first day of May, one thousand nine hundred and thirty-seven. (1937, c. 127, s. 834.)

§ 7880(193). Authority for imposition of tax.—This act, after its ratification, shall constitute authority for the imposition of taxes upon the subject herein revised, and all laws in conflict with it are hereby repealed, but such repeal shall not affect taxes listed or which ought or should have been listed, or which may have been due, or penalties or fines incurred from failure to make the proper reports, or to pay the taxes at the proper time under any of the schedules of existing law, but such taxes and penalties may be collected, and criminal offenses prosecuted under such law existing at the time of the ratification of this act, notwithstanding this repeal. (1937, c. 127, s. 835.)

§ 7880(194). Taxes to be paid.—(a) No court of this state shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this act. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and notify such officer in writing that he pays same under protest. Such payment shall be without prejudice to any defense of rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the commissioner of revenue of the state, if a state

tax, or if a county, city, or town tax, from the treasurer thereof for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such official in the courts of the state for the amount so demanded. Such suit, if against the state commissioner of revenue, must be brought in the superior court of Wake county, or in the county in which the taxpayer resides, if the sum demanded is upwards of two hundred dollars (\$200.00), and if for two hundred dollars (\$200.00) or less, before any state court of competent jurisdiction in Wake county. If for a county, city or town tax, suit must be brought in a state court of competent jurisdiction in the county where the tax is collectible, and the defendant official has his official residence. If upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state.

(b) In case of determination after an examination by a department representative has been made and a refund is found to be due, in addition to the amount of tax overpaid, interest shall be added at the rate of six per cent (6%) per annum from the date tax was paid. (1937, c. 127, s. 836.)

To Recover Tax Illegally Collected Statutory Procedure Must Be Complied with.—

In an action under the Revenue Act of 1933 it was held that an allegation that the tax was paid under compulsion was a mere conclusion of the pleader, and a demurrer of the Commissioner of Revenue was sustained. *Metro-Goldwyn-Mayer Distributing Corp. v. Maxwell*, 209 N. C. 47, 182 S. E. 724.

Section Provides Adequate Remedy at Law.—A suit to enjoin the collection of the photographer's tax imposed by § 7880(38) was held not maintainable as there is an adequate remedy at law under the provisions of this section. *Lucas v. Charlotte*, 14 F. Supp. 163.

§ 7880(194)a. Reciprocal comity. — The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by other states which extend a like comity to this state. (1937, c. 127, s. 837.)

For an analysis of this section, see 13 N. C. Law Rev., No. 4, p. 405.

§ 7880(194)b. Extraterritorial authority to enforce payment. — The commissioner of revenue, with the assistance of the attorney general, is hereby empowered to bring suits in the courts of other states to collect taxes legally due this state. The officials of other states which extend a like comity to this state are empowered to sue for the collection of such taxes in the courts of this state. A certificate by the secretary of state, under the great seal of the state, that such officers have authority to collect the tax shall be conclusive evidence of such authority. (1937, c. 127, s. 838.)

§ 7880(195). Unconstitutionality or invalidity; captions of sections not to affect interpretation. — If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the re-

mainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof. (1937, c. 127, s. 839.)

SUBCHAPTER II. ASSESSMENT AND LISTING OF TAXES

§§ 7971(1)-7971(51): Repealed by Public Laws 1937, c. 291, s. 1703, codified as § 7971(206).

§§ 7971(52)-7971(98): Repealed by Public Laws 1937, c. 291, s. 1703, codified as § 7971(206).

Art. 9A. Machinery Act of 1937

Part 1. In General

§ 7971(104). Official title. — This act may be cited as the Machinery Act of one thousand nine hundred thirty-seven. (1937, c. 291, s. 1.)

Editor's Note.—The 1937 Machinery Act repeals articles 1 to 8 of this subchapter with the exception of §§ 7971(51a) and 7971(51b).

§ 7971(105). Definitions. — When used in this act:

(1) The term "person" means an individual, trust, estate, partnership, firm or company.

(2) The term "corporation" includes associations, joint-stock companies, insurance companies, and limited partnerships where shares of stock are issued.

(3) The term "domestic" when applied to corporations or partnerships means created or organized under the laws of the state of North Carolina.

(4) The term "foreign" when applied to corporations or partnerships means a corporation or partnership not domestic.

(5) The term "commissioner" means the commissioner of revenue.

(6) The term "deputy" means an authorized representative of the commissioner of revenue or other commissioner.

(7) The term "taxpayer" means any person or corporation subject to a tax or duty imposed by the Revenue Act or Machinery Act, or whose property is subject to any ad valorem tax levied by the state or its political sub-divisions.

(8) The term "state license" means a license issued by the commissioner of revenue, usable, good and valid in the county or counties named in the license.

(9) The term "state-wide license" means a license issued by the commissioner of revenue, usable, good and valid in each and every county in this state.

(10) The term "intangible property" means patents, copyrights, secret processes and formulæ, good will, trade-marks, trade-brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, bills and accounts receivable, and other like property.

(11) The term "tangible property" means all property other than intangible.

(12) The term "public utility" as used in this act means and includes each person, firm, company, corporation and association, their lessees, trustees or receivers, elected or appointed by any authority whatsoever, and herein referred to as

express company, telephone company, telegraph company, Pullman-car company, freight-line company, equipment company, electric power company, gas company, railroad company, union depot company, water transportation company, street railway company, and other companies exercising the right of eminent domain, and such term, "public utility," shall include any plant or property owned or operated by any such persons, firms, corporations, companies or associations.

(13) The term "express company" means a public utility company engaged in the business of conveying to, from, or through this state, or part thereof, money, packages, gold, silver, plate, or other articles and commodities by express, not including the ordinary freight lines of transportation of merchandise and property in this state.

(14) The term "telephone company" means a public utility company engaged in the business of transmitting to, from, through, or in this state, or part thereof, telephone messages or conversations.

(15) The term "telegraph company" means a public utility company engaged in the business of transmitting to, from, through, or in this state, or a part thereof, telegraphic messages.

(16) The term "Pullman-car company" means a public utility company engaged in the business of operating cars for the transportation, accommodation, comfort, convenience, or safety of passengers, on or over any railroad line or lines or other common carrier lines, in whole or in part within this state, such line or lines not being owned, leased, and/or operated by such railroad company, whether such cars be termed sleeping, Pullman, palace, parlor, observation, chair, dining or buffet cars, or by any other name.

(17) The term "freight-line company" means a public utility company engaged in the business of operating cars for the transportation of freight or commodities, whether such freight and/or commodities is owned by such company or any other person or company, over any railroad or other common carrier line or lines in whole or in part within this state, such line or lines not being owned, leased, and/or operated by such railroad company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, refrigerator, fruit, meat, oil, or by any other name.

(18) The term "equipment company" means a public utility company engaged in the business of furnishing and/or leasing cars, of whatsoever kind or description, to be used in the operation of any railroad or other common carrier line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such railroad company.

(19) The term "electric power company" means a public utility company engaging in the business of supplying electricity for light, heat and/or power purposes to consumers within this state.

(20) The term "gas company" means a public utility company engaged in the business of supplying gas for light, heat, and/or power purposes to consumers within this state.

(21) The term "waterworks company" means a public utility company engaged in the business of supplying water through pipes or tubing and/or similar manner to consumers within this state.

(22) The term "union depot company" means a

public utility company engaged in the business of operating a union depot or station for railroads or other common carrier purposes.

(23) The term "water transportation company" means a public utility company engaged in the transportation of passengers and/or property by boat or other water craft, over any waterway, whether natural or artificial, from one point within this state to another point within this state, or between points within this state and points without this state.

(24) The term "street railway company" means a public utility company engaged in the business of operating a street, suburban or interurban railway, either wholly or partially within this state, whether cars are propelled by steam, cable, electricity, or other motive power.

(25) The term "railroad company" means a public utility company engaged in the business of operating a railroad, either wholly or partially within this state, or rights-of-way acquired or leased and held exclusively by such company or otherwise.

(26) The term "gross receipts" or "gross earnings" mean and include the entire receipts for business done by any person, firm, or corporation, domestic or foreign, from the operation of business or incidental thereto, or in connection therewith. The gross receipts or gross earnings for business done by a corporation engaged in the operation of a public utility shall mean and include the entire receipts for business done by such corporation, whether from the operation of the public utility itself or from any other source whatsoever.

(27) The terms "bank," "banker," "broker," "stock jobber" mean and include any person, firm, or corporation who or which has money employed in the business of dealing in coin, notes, bills of exchange, or in any business of dealing, or in buying or selling any kind of bills of exchange, checks, drafts, bank notes, acceptances, promissory notes, bonds, warrants or other written obligations, or stocks of any kind or description whatsoever, or receiving money on deposit.

(28) The terms "collector" and "collectors" mean and include county, township, city or town tax collectors, and sheriffs.

(29) The terms "list takers" and "assessors" mean and include list takers, assessors and assistants.

(30) The terms "real property," "real estate," "land," "tract," or "lot" mean and include not only the land itself, but also all buildings, structures, improvements and permanent fixtures thereon, and all rights and privileges belonging or in any wise appertaining thereto, except where the same may be otherwise denominated by this or the Revenue Act.

(31) The terms "shares of stock" or "shares of capital stock" mean and include the shares into which the capital or capital stock of any incorporated company or association may be divided.

(32) The terms "tax" or "taxes" mean and include any taxes, special assessments, costs, penalties, and/or interest imposed upon property or other subjects of taxation. (1937, c. 291, s. 2.)

Part 2. State Board of Assessment

§ 7971(106). **Creation; officers.**—The governor,

or some person designated by him, the commissioner of revenue, the public utilities commissioner, the attorney general, and the director of local government shall be and are hereby created the state board of assessment, with all the powers and duties prescribed in the act. The commissioner of revenue shall be the chairman of the said board, and shall, in addition to presiding at the meetings of the board, exercise the functions, duties, and powers of the board when not in session. The board may employ an executive secretary, whose entire time may be given to the work of the said board, and is authorized to employ such clerical assistance as may be needed for the performance of its duties; all expenses of said board shall be paid out of funds appropriated out of the general fund to the credit of the department of revenue of the state. (1937, c. 291, s. 200.)

§ 7971(107). **Oath of office.** — The members of the board shall take and subscribe to the constitutional oath of office and file the same with the secretary of state. (1937, c. 291, s. 201.)

§ 7971(108). **Duties of the board.** — The state board of assessment shall exercise general and specific supervision of the systems of valuation and taxation throughout the state, including counties and municipalities, and in addition it shall be and constitute a state board of equalization and review of valuation and taxation in this state. It shall be the duty of said board:

(1) To confer with and advise boards of county commissioners, tax supervisors, assessing officers, list takers, and all others engaged in the valuation and assessment of property, in the preparation and keeping of suitable records, and in the levying and collection of taxes and revenues, as to their duties under this act or any other act passed with respect to valuation of property, assessing, levying or collection of revenue for counties, municipalities and other sub-divisions of the state, to insure that proper proceedings shall be brought to enforce the statutes pertaining to taxation and for the collection of penalties and liabilities imposed by law upon public officers, officers of corporations, and individuals failing, refusing or neglecting to comply with this act; and to call upon the attorney general or any prosecuting attorney in the state to assist in the execution of the powers herein conferred.

(2) To prepare a pamphlet or booklet for the instruction of the boards of county commissioners, tax supervisors, assessing officers, list takers, and all others engaged in the valuation of property, preparing and keeping records, and in the levying and collecting of taxes and revenue, and have the same ready for distribution at least thirty (30) days prior to the date fixed for listing taxes. The said pamphlet or booklet shall, in as plain terms as possible, explain the proper meaning of the revenue laws and the Machinery Act of this state; shall call particular attention to any points in the law or in the administration of the laws which may be or which have been overlooked or neglected; shall advise as to the practical working of the revenue laws and the Machinery Act, and shall explain and interpret any points that seem to be intricate and upon which county or state officials may differ.

(3) To hear and to adjudicate appeals from

boards of county commissioners and county boards of equalization and review as to property liable for taxation that has not been assessed or of property that has been fraudulently or improperly assessed through error or otherwise, to investigate the same, and if error, inequality, or fraud is found to exist, to take such proceedings and to make such orders as to correct the same. In case it shall be made to appear to the state board of assessment that any tax list or assessment roll in any county in this state is grossly irregular, or any property is unlawfully or unequally assessed as between individuals, between sections of a county, or between counties, the said board shall correct such irregularities, inequalities and lack of uniformity, and shall equalize and make uniform the valuation thereof upon complaint by the board of county commissioners under rules and regulations prescribed by it, not inconsistent with this act: Provided, that no appeals shall be considered or fixed values changed unless notice of same is filed within sixty (60) days after the final values are fixed and determined by the board of county commissioners or the board of equalization and review, as hereinafter provided.

(4) To require from the register of deeds, auditor, county accountant, tax clerk, clerk of the court or other officer of each county, and the mayor, clerk or other officer of each municipality, on forms prepared and prescribed by the said board, such annual and other reports as shall enable said board to ascertain the assessed valuation of all property listed for taxation in this state under this or any other act, the rate and amount of taxes assessed and collected, the amount returned delinquent, tax sales, certificates of purchase at such tax sales held by the state, county or municipality, and such other information as the board may require, to the end that it may have full, complete, and accurate statistical information as to the practical operation of the tax and revenue laws of the state.

(5) To require the secretary of state, and it shall be his duty, to furnish monthly to the said board a list of all domestic corporations incorporated, charter amended or dissolved, all foreign corporations domesticated, charter amended, dissolved or domestication withdrawn during the preceding month, in such detail as may be prescribed by said board.

(6) To make diligent investigation and inquiry concerning the revenue laws and systems of taxation of other states, so far as the same are made known by published reports and statistics and can be ascertained by correspondence with officers thereof.

(7) To report to the general assembly at each regular session, or at such other times as it may direct, the total amount of revenue or taxes collected in this state for state, county, and municipal purposes, classified as to state, county, township, and municipality, with the sources thereof; to report to the general assembly the proceeding of the board and such other information and recommendations concerning the public revenues as required by the general assembly or that may be of public interest; to cause two thousand (2,000) copies of said report to be printed on or before the first day of January in the year of the regular session of the general assembly, and place at the

disposal of the state librarian one hundred (100) copies of said report for distribution and exchange, if and when funds are available for said purpose; and to forward a copy of said report to each member of the general assembly as soon as printed.

(8) To discharge such other duties as may be prescribed by law, and take such action, do such things, and prescribe such rules and regulations as may be needful and proper to enforce the provisions of this and the Revenue Act.

(9) To prepare for the legislative committee of succeeding general assemblies such suggestions of revision of the revenue laws, including the Machinery Act, as it may find by experience, investigation, and study to be expedient and wise.

(10) To report to the governor, on or before the first day of January of each year, the proceedings of said board during the preceding year, with such recommendations as it desires to submit with respect to any matters touching taxation and revenue.

(11) To keep full, correct and accurate records of its official proceedings.

(12) To properly administer the duties prescribed by article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], with respect to division and certification of taxes collected thereunder; the state board of assessment shall hear and pass upon any matters relative thereto. (1937, c. 291, s. 202.)

§ 7971(109). Powers of the board.—To the end that the board may properly discharge the duties placed upon it by law, it is hereby accorded the following powers:

(1) It may, in its discretion, prescribe the forms, books, and records that shall be used in the valuation of property and in the levying and collection of taxes, and how the same shall be kept; to require the county tax supervisors, clerks or boards of county commissioners, or auditor of each county to file with it, when called for, complete abstracts of all real and personal property in the county, itemized by townships and as equalized by the county board of equalization and review; and to make such other rules and regulations, not included in this or the Revenue Act, as said board may deem needful effectually to promote the purposes for which the board is constituted and the systems of taxation provided for in this and the Revenue Act.

(2) The board, its members or any duly authorized deputy shall have access to all books, papers, documents, statements, records and accounts on file or of records in any department of state, county or municipality, and is authorized and empowered to subpoena witnesses upon a subpoena signed by the chairman of the board, directed to such witnesses, and to be served by any officer authorized to serve subpoenas; to compel the attendance of witnesses by attachment to be issued by any superior court upon proper showing that such witness or witnesses have been duly subpoenaed and have refused to obey such subpoena or subpoenas; and to examine witnesses under oath to be administered by any member of the board.

(3) The board, its members or any duly authorized deputy are authorized and empowered to examine all books, papers, records or accounts of

persons, firms and corporations, domestic and foreign, owning property liable to assessment for taxes, general or specific, levied by this state or its sub-divisions. Said board, its members or any duly authorized deputy are also given power and authority to examine the books, papers, records or accounts of any person, firm or corporation where there is ground for believing that information contained in such books, papers, records and accounts is pertinent to the decision of any matter pending before said board, regardless of whether such person, firm or corporation is a party to the proceeding before the board. Books, papers, records or accounts examined under authority of this subdivision of this section shall be examined only after service of a proper subpoena, signed by the chairman of the board and served by an officer authorized to serve subpoenas upon the person having the custody of such books, papers, records or accounts.

Any person, persons, member of a firm, or any officer, director or stockholder of a corporation, bank or trust company who shall refuse permission to inspect any books, papers, documents, statements, accounts or records demanded by the state board of assessment, the members thereof, or any duly authorized deputy provided for in this act or the Revenue Act, or who shall wilfully fail, refuse, or neglect to appear before said board in response to its subpoena or to testify as provided for in this act and the Revenue Act, shall, in addition to all other penalties imposed in this or the Revenue Act, be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(4) The board is authorized and empowered to direct any member or members of the board to hear complaints, to make examination and investigations, and to report his or their findings of fact and conclusions of law to the board. Upon demand of any party to an appeal pending before the board, the board shall send one of its members or a special representative designated by it to make an actual examination of the property and other similar property in the same county and report to the board. The cost of making said examination shall be advanced by the county: Provided, that in cases in which the examination is demanded by a taxpayer, if the board's decision does not substantially affirm the contentions of the taxpayer, the board in its decision shall direct that the county advancing the cost may add such cost to the taxes levied against the property.

(5) The board shall have power to certify copies of its records and proceedings, attested with its official seal, and copies of records or proceedings so certified shall be received in evidence in all courts of this state with like effect as certified copies of other public records.

(6) The board may, upon its own motion or upon request of any tax supervisor or county board of commissioners, transmit or make available to a supervisor or duly authorized representative of such board of commissioners any information contained in any report to said state board, or in any report to the department of revenue or other state department to which said state board may have access, or any other information which said state board may have in its possession when, in the

opinion of said board, such information will assist said supervisor or representative of the commissioners in securing an adequate listing of property for taxation or in assessing taxable property.

Except as herein specified, and except to the governor or his authorized agent or solicitor or authorized agent of the solicitor of a district in which such information would affect the listing or valuation of property for taxes, the state board shall not divulge or make public the reports made to it or to other state departments: Provided, this shall not interfere with the publication of assessments and decisions made by said board or with publication of statistics by said board; nor shall it prevent presentation of such information in any administrative or judicial proceedings involving assessments or decisions of said board.

Information transmitted or made available to local tax authorities under this section shall not be divulged or published by such authorities, and shall be used only for the purposes of securing adequate tax lists, assessing taxable property and presentation in administrative or judicial proceedings involving such lists or assessments. (1937, c. 291, s. 203.)

§ 7971(110). Sessions of board, where to be held.

—The regular sessions of the state board of assessment shall be held in the city of Raleigh at the office of the chairman, and other sessions may be called at any place in the state to be decided by the board. (1937, c. 291, s. 204.)

Part 3. Quadrennial and Annual Assessment

§ 7971(111). Listing and assessing in quadrennial years.—In one thousand nine hundred and thirty-seven, and quadrennially thereafter, all property, real and personal, subject to taxation, shall be listed and assessed for ad valorem tax purposes: Provided, that in one thousand nine hundred and thirty-seven and quadrennially thereafter the county boards of commissioners may determine whether real property in the respective counties and townships shall be revalued by horizontal increase or reduction or by actual appraisal thereof, or both: Provided further, that in those counties and townships where no actual appraisal of real property is made in one thousand nine hundred and thirty-seven, the county boards of commissioners may in one thousand nine hundred and thirty-eight exercise all the provisions contained herein for listing and assessing and revaluing real property. Where the horizontal method is used, the provisions of the next succeeding section shall also apply. (1937, c. 291, s. 300.)

§ 7971(112). Listing and assessing in years other than quadrennial years.—In years other than quadrennial years all property, real and personal, subject to taxation, shall be listed for ad valorem tax purposes. Property not subject to reassessment in such years shall be listed at the value at which it was assessed at the last quadrennial assessment. In all such years the following property shall be assessed or reassessed:

(1) All personal property (which for purposes of taxation shall include all personal property whatsoever, tangible or intangible, except personal property expressly exempted by law).

(2) All machinery, service station equipment, merchandise and trade fixtures, barber shop equip-

ment, meat market equipment, restaurant and cafe fixtures, drug store equipment and similar property not permanently affixed to the real estate.

(3) All real property (which for purposes of taxation shall include all lands within the state and all buildings and fixtures thereon and appurtenances thereto) which:

(a) Was not assessed at the last quadrennial assessment.

(b) Has increased in value to the extent of more than one hundred dollars (\$100.00) by virtue of improvements or appurtenances added since the last assessment of such property.

(c) Has decreased in value to the extent of more than one hundred dollars (\$100.00) by virtue of improvements or appurtenances damaged, destroyed or removed since the last assessment of such property.

(d) Has increased or decreased in value since the last assessment of such property by virtue of some extraordinary circumstances, such circumstances being those of unusual occurrence in trade or business, and the facts in connection with which shall be found by the board of equalization in each case and entered upon the proceedings of said board.

(e) Has been subdivided into lots located on streets already laid out and open, and sold or offered for sale as lots, since the date of the last assessment of such property. This shall apply to all cases of sub-division into lots, regardless of whether the land is situated within or without an incorporated municipality: Provided, that where lands have been subdivided into lots, and more than five acres of any such sub-division remain unsold by the owner thereof, the unsold portion may be listed as land acreage, in the discretion of the tax supervisor.

(f) Was last assessed at an improper figure as the result of a clerical error.

(g) Was last assessed at a figure which manifestly is unjust by comparison with the assessment placed upon similar property in the county: Provided, that the power to reassess under this sub-division shall be exercised only by the board of equalization and review, subject to appeal to the state board of assessment. (1937, c. 291, s. 301.)

§ 7971(113). Date as of which assessment is to be made.—All property, real and personal, shall be listed or listed and assessed, as the case may be, in accordance with ownership and value as of the first day of April, one thousand nine hundred and thirty-seven, and thereafter all property shall be listed or listed and assessed in accordance with ownership and value as of the first day of April each year. (1937, c. 291, s. 302.)

§ 7971(114). Property subject to taxation.—All property, real and personal, within the jurisdiction of the state, not especially exempted, shall be subject to taxation. (1937, c. 291, s. 303.)

Editor's Note.—For cases construing former § 7971(18), now repealed, which defined what should be included as personal property see *Lawrence v. Shaw*, 210 N. C. 352, 361, 186 S. E. 504; *Mecklenburg County v. Sterchi Bros. Stores*, 210 N. C. 79, 185 S. E. 454.

Taxation of Personal Property of Nonresidents Is Constitutional.—The taxation of personal property of nonresidents by this state when such personal property has acquired a taxable situs here does not violate the provisions of the 14th Amendment of the Federal Constitution, the rule that personal property follows the domicile of the

owner being subject to an exception when such personality is held in such a manner as to create a "business situs" for the purpose of taxation. *Mecklenburg County v. Sterchi Bros. Stores*, 210 N. C. 79, 185 S. E. 454, construing former § 7971(18), now repealed.

§ 7971(115). Article subordinated to § 7880-(156)oo et seq.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], but rather shall they be subordinate thereto. (1937, c. 291, s. 304.)

Part 4. Personnel for County Tax Listing and Assessing

§ 7971(116). Appointment and qualification of tax supervisors.—At or before the regular meeting next preceding the date as of which property is to be listed and assessed, the board of county commissioners of each county shall appoint as tax supervisor some person who shall be a freeholder in the county, who shall, for one year immediately preceding the appointment, have been a resident of the county, and whose experience in the valuation of real and personal property is satisfactory to the board.

In counties in which there is an auditor, tax clerk, county accountant, all-time chairman of the board of county commissioners, or other similar officer, either may be designated as supervisor by the board of county commissioners. (1937, c. 291, s. 400.)

§ 7971(117). Term of office and compensation of supervisors.—The tax supervisor shall serve for one year or for such shorter period of time as the board may designate. In the case he is appointed for one year he shall serve until his successor is appointed and has qualified, subject to removal for cause by the board of commissioners at any time. Any vacancy shall be filled by appointment by the board of commissioners.

The compensation of the supervisor shall be fixed by the board of commissioners, and he shall be allowed such expenses as the commissioners may approve. (1937, c. 291, s. 401.)

§ 7971(118). Oath of office of supervisor.—Immediately after his appointment, and before entering upon the duties of his office, the supervisor shall file with the clerk of the board of commissioners the following oath, subscribed and sworn to before the chairman of the board of commissioners or some other officer qualified to administer oaths:

"I,, County Tax Supervisor for..... County, North Carolina, for the year, do solemnly swear (or affirm) that I will discharge the duties of my office as supervisor according to the laws in force governing such office; so help me, God.

.....
(Signature.)

(1937, c. 291, s. 402.)

§ 7971(119). Powers and duties of tax supervisor. — (1) The supervisor shall have general charge of the listing and assessing of all property in the county in accordance with the provisions of law.

(2) He shall appoint the list takers and assess-

sors, subject to the approval of the commissioners, as hereinafter provided.

(3) He shall, on the second Monday preceding the date as of which property is to be assessed or at some time during the week which includes said Monday, convene the list takers and assessors for general consideration of methods of securing a complete list of all property in the county, and of assessing, in accordance with law, all property which is to be assessed during the approaching listing period.

(4) He shall visit each list taker at least once during the period of listing, and shall confer with each list taker during said period as often as he or the list taker deems necessary, to the end that all property shall be listed and assessed according to law, and that assessments shall be equalized as between the various townships.

(5) He shall have power to subpoena any person for examination under oath and to subpoena any books, papers, records or accounts whenever he has reasonable grounds for the belief that such person has knowledge or such books, papers, records and accounts containing information which is pertinent to the discovery or the valuation of any property subject to taxation in the county, or which is necessary for compliance with the requirements as to what the tax list shall contain, hereinafter set forth. The subpoena shall be signed by the chairman of the county board of equalization and served by an officer qualified to serve subpoenas.

(6) He may require that any or all persons, firms and corporations, domestic and foreign, engaged in operating any business enterprise in the county shall submit, in connection with his or its regular tax list, a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery of valuation of property taxable in the county. Inventories, statements of assets and liabilities or other information not expressly required by this act to be shown on the tax list itself, secured by the supervisor under the terms of this subdivision, shall not be open to public inspection.

Any supervisor or other official disclosing information so obtained, except as such disclosure may be necessary in listing or assessing property or in administrative or judicial proceedings relating to such listing or assessing, shall be guilty of a misdemeanor and punishable by fine not exceeding fifty dollars (\$50.00).

(7) He shall have power, for good cause, and prior to the first meeting of the board of equalization and review, to change the valuation placed upon any property by the list taker, provided such property is subject to assessment for the current year, and provided that notice of such change is given to the taxpayer prior to the meeting of said board.

(8) He shall perform such other duties as may be imposed upon him by law, and shall have and exercise all powers reasonably necessary in the performance of his duties, not inconsistent with the constitution or the laws of this state. (1937, c. 291, s. 403.)

§ 7971(120). Appointment, qualifications, and number of list takers and assessors.—Subject to the approval of the county commissioners, the su-

pervisor, on or before the second Monday preceding the date as of which property is to be assessed, shall appoint some competent person to act as list taker and assessor in each township. With the approval of the commissioners he may appoint more than one such person for any township in which is situated an incorporated town or part of an incorporated town. In quadrennial years three such persons shall be appointed in each township, and more than three may be appointed in townships in which is located an incorporated town or part of an incorporated town; and in such years, at the time of their appointment, such appointees shall have been resident freeholders of the county for at least twelve months: Provided, that in any county adopting the horizontal method of revaluation in one thousand nine hundred and thirty-seven, and quadrennially thereafter the commissioners may appoint less than three list takers and assessors per township: Provided further, that in quadrennial years the board of county commissioners may appoint one list taker and assessor in each township if in addition thereto at least two county-wide list takers and assessors are appointed. In every year the persons appointed shall be persons of character and integrity, and shall have such experience in the valuation of types of property commonly owned in the county as shall satisfy the supervisor and the commissioners. (1937, c. 291, s. 404.)

§ 7971(121). Term of office and compensation of list takers and assessors.—The list takers and assessors shall serve for such period as may be fixed by the commission. They shall receive for their services such compensation as the commissioners may fix. No list taker shall receive compensation until the supervisor has checked over the lists accepted by him, as hereinafter required, and certified that his work has been satisfactory. Each list taker shall make out his account in detail, specifying each day's services, which account shall be audited by the county accountant and approved by the commissioners. (1937, c. 291, s. 405.)

§ 7971(122). Oath of list takers and assessors.—Before entering upon his duties each list taker and assessor shall take the following oath, which shall be filed with the clerk to the board of commissioners after having been subscribed and sworn to before some officer qualified to administer oaths: "I,, List Taker and Assessor for Township, County, North Carolina, do hereby solemnly swear (or affirm) that I will discharge the duties of my office according to the laws in force that govern said office; so help me, God.

....."
(Signature.)

(1937, c. 291, s. 406.)

§ 7971(123). Powers and duties of list takers and assessors.—(1) At least ten days before the date as of which property is to be assessed, each list taker shall post, in five or more public places in his township, a notice containing at least the following: (a) the date as of which property is to be assessed; (b) the date on which listing will begin; (c) the date on which the listing will end; (d) the times and places between the last two dates mentioned at which lists will be accepted;

(e) a notice that all persons who, on the date as of which property is to be assessed, own property subject to taxation must list such property within the period set forth in the notice, and that failure to do so will subject such persons to the penalties prescribed by law.

In townships in which more than one list taker has been appointed the posting of these notices shall be the duty of one of them, to be designated by the supervisor.

In case the period of listing in any township shall be extended by the commissioners, as hereinafter permitted, it shall be the duty of the list taker who first posted the notices to post new notices in the same places, giving notice of the extension and notice of the times and places at which lists will be accepted during the extended period.

(2) Each list taker shall attend the meeting referred to in sub-division three of section 7971(119).

(3) The list takers and assessors, under the supervision of the supervisor, shall secure lists of all real and personal property and polls subject to taxation in their townships, and shall assess all such property as is subject to assessment under the provisions of this act. To this end they shall secure from each taxpayer or person whose duty it is to list property or poll in their respective townships a list containing the information hereinafter specified, and shall have the authority to visit any such person or his property, to investigate the value of any such property, and to examine under oath any such person present before them for the purpose of listing property. The supervisor may, in his discretion, require any list taker and assessor to visit each person in his township whose property or poll is subject to taxation.

(4) Each list taker and assessor shall have power to subpoena any person for examination under oath whenever he has reasonable grounds for belief that such person has knowledge which is pertinent to the discovery or valuation of property subject to taxation in his township or which is necessary for compliance with the requirements, hereinafter set forth, as to what the tax list shall contain.

(5) The list takers and assessors shall perform such duties in connection with the making up of the tax records and in connection with the discovery of unlisted property as hereinafter specified.

(6) The list takers and assessors shall perform such other duties as may be by law imposed upon them; and they shall have and exercise all powers necessary to the proper discharge of their duties not inconsistent with the constitution or the statutes of this state. (1937, c. 291, s. 407.)

§ 7971(124). Employment of experts.—The board of county commissioners in each county, at the request of the county supervisor of taxation, may in their discretion employ one or more persons having expert knowledge of the value of specific kinds or classes of property within the county, such as mines, factories, mills and other similar property, to aid and assist the county supervisor of taxation and the list takers and assessors in the respective townships, or to advise with, aid and assist the board of equalization and review in arriving at the true value in money of the prop-

erty in the county. Such expert, or experts, so employed by the board of county commissioners shall receive for their services such compensation as the board of county commissioners shall designate. (1937, c. 291, s. 408.)

§ 7971(125). Clerical assistants.—The county commissioners may, in their discretion, upon recommendation of the supervisor, employ such clerical assistants to the supervisor as they deem proper, and at such compensation and for such terms as they deem proper. Such assistants shall perform such duties as the commissioners or the supervisor may assign to them. (1937, c. 291, s. 409.)

§ 7971(126). Tax commission.—In all counties having a tax commission, said commission shall do and perform all the duties required by this act to be performed by county commissioners except levying taxes, and all expenses incurred by said tax commission or its appointees in accordance with this act shall be paid by the county commissioners out of the general county funds. (1937, c. 291, s. 410.)

Part 5. Uniform ad Valorem Taxation

§ 7971(127). Taxes to be on uniform ad valorem basis.—All property, real and personal, shall, as far as practicable, be valued at its true value in money, and taxes levied by all counties, municipalities and other local taxing authorities shall be levied uniformly on valuations so determined. The intent and purpose of this act is to have all property and subjects of taxation assessed at their true and actual value in money, in such manner as such property and subjects are usually sold, but not by forced sale thereof, and the words "market value," "true value," or "cash value," whenever used in the tax laws of this state, shall be held to mean for what the property and subjects can be transmuted into cash when sold in such manner as such property and subjects are usually sold. (1937, c. 291, s. 500.)

§ 7971(128). Land and buildings.—In determining the value of land the assessors shall consider as to each tract, parcel or lot separately listed at least its advantages as to location, quality of soil, quantity and quality of timber, water power, water privileges, mineral or quarry or other valuable deposits, fertility, adaptability for agricultural, commercial or industrial uses, the past income therefrom, its probable future income, the present assessed valuation, and any other factors which may affect its value.

In determining the value of a building the assessors shall consider at least its location, type of construction, age, replacement cost, adaptability for residence, commercial or industrial uses, the past income therefrom, the probable future income, the present assessed value, and any other factors which may affect its value. Buildings partially completed shall be assessed in accordance with the degree of completion on the day as of which property is assessed. (1937, c. 291, s. 501.)

Part 6. Exemptions and Deductions

§ 7971(129). Real property exempt.—The following real property, and no other, shall be exempted from taxation:

(1) Real property, if directly or indirectly owned by the United States or this state, however held, and real property owned by the state for the benefit of any general or special fund of the state, and real property lawfully owned and held by counties, cities, townships, or school districts, used wholly and exclusively for public or school purposes.

(2) Real property, tombs, vaults and mausoleums set apart for burial purposes, except such as are owned and held for purposes of sale or rental.

(3) Buildings, with the land upon which they are situated, lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(4) Buildings, with the land actually occupied, wholly devoted to educational purposes, belonging to, actually and exclusively occupied and used for public libraries, colleges, academies, industrial schools, seminaries, or any other institutions of learning, together with such additional adjacent land owned by such libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, and also the buildings thereon used as residences by the officers or instructors of such educational institutions.

(5) Real property belonging to, actually and exclusively occupied by Young Men's Christian Associations and other similar religious associations, orphanages, or other similar homes, hospitals and nunneries not conducted for profit, but entirely and completely as charitable.

(6) Buildings, with the land actually occupied, belonging to the American Legion or Post of the American Legion or any benevolent, patriotic, historical, or charitable association used exclusively for lodge purposes by said societies or associations, together with such additional adjacent land as may be necessary for the convenient use of the buildings thereon.

(7) Property beneficially belonging to or held for the benefit of churches, religious societies, charitable, educational, literary, benevolent, patriotic or historical institutions or orders, where the rent, interest or income from such investment shall be used exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of said institutions or orders.

(8) The exemptions granted in sub-sections three, four, five, six, and seven of this section shall apply to real property of foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders when such property is exclusively used for or the income therefrom is exclusively used for religious, charitable, educational or benevolent purposes within this state.

(9) The real property of Indians who are not citizens, except lands held by them by purchase.

(10) Real property falling within the provisions of section one thousand one hundred and twenty-three of the Consolidated Statutes, appropriated exclusively for public parks and drives. (1937, c. 291, s. 600.)

Editor's Note.—By an interpretation of the Code of 1935,

§ 7971(87) which some thought to be unnecessarily literal, the court had held foreign eleemosynary corporations deprived of the exemptions otherwise granted to such organizations on property used in their work in the state. *Catholic Soc. v. Gentry*, 210 N. C. 579, 187 S. E. 795. The exemptions are now granted in specific terms by subsection (8) of this and the following section, 15 N. C. Law Rev., No. 4, p. 391.

For act placing Gaston county under provisions of former statute relating to taxation of private hospitals, see Public Laws 1937, c. 60.

§ 7971(130). Personal property exempt.—The following personal property, and no other, shall be exempt from taxation:

(1) Bonds of this state, of the United States, federal farm loan bonds, joint-stock land bank bonds, and bonds of political sub-divisions of this state, hereafter issued: provided, that the purchase of tax-exempted bonds within sixty days before the tax-listing date and sale of the same within sixty days after the tax-listing date, or the purchase of tax-exempted bonds prior to the tax-listing date, with the understanding that the seller will on request repurchase them after the tax-listing date at a price not lower than a figure specified in the original understanding, shall be prima facie evidence that said bonds were purchased for the purpose of evading taxation, and a solvent credit in the amount of the value of the same will be listed and liable for taxation.

(2) Personal property, directly or indirectly owned by this state and by the United States, and that lawfully owned and held by the counties, cities, towns, and school districts of the state, used wholly and exclusively for county, city, town, or public school purposes.

(3) The furniture and furnishings of buildings lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any church or religious body, and private libraries of such ministers and the teachers of the public schools of this state.

(4) The furniture, furnishings, books, and instruments contained in buildings wholly devoted to educational purposes, belonging to and exclusively used by churches, public libraries, colleges, academies, industrial schools, seminaries, or other institutions.

(5) The endowment and invested funds of churches and other religious associations, charitable, educational, literary, benevolent, patriotic or historical institutions, associations or orders, when the interest or income from said funds shall be used wholly and exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of said associations.

(6) Personal property belonging to Young Men's Christian Associations and other similar religious associations, orphan and other similar homes, reformatories, hospitals, and nunneries which are not conducted for profit and entirely and completely used for charitable and benevolent purposes.

(7) The furniture, furnishings, and other personal property belonging to any American Legion, or Post of American Legion, patriotic, historical, or any benevolent or charitable association, when used wholly for lodge purposes and meeting rooms by said association or when such personal property is used for charitable or benevolent purposes.

(8) The exemptions granted in sub-sections

three, four, five, six, and seven of this section shall apply to personal property of foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders when such property is exclusively used or the income therefrom is exclusively used for religious, charitable, educational or benevolent purposes within this state.

(9) Wearing apparel, household and kitchen furniture, the mechanical and agricultural instruments of farmers and mechanics, libraries and scientific instruments, provisions and livestock, not exceeding the total value of three hundred dollars (\$300.00), and all growing crops.

(10) Shares of stock owned by individual stockholders in any domestic corporation, joint-stock association, limited partnership, or company paying a tax on its entire capital stock shall not be required to be listed or to pay an ad valorem tax; and shares of stock owned and legally held on and continuously held for at least ninety days just prior to the tax-listing day by a corporation in any other corporation paying a tax on its entire capital stock shall not be required to be listed or to pay an ad valorem tax. Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock in this state, providing the owner of such shares of stock has complied with the provisions of the Revenue Act, and the situs of such shares of stock in foreign corporations owned by residents of this state, for the purposes of this act, is hereby declared to be at the place where said corporation undertakes and carries on its principal business. (1937, c. 291, s. 601.)

School bonds of a city in this state in the hands of an investor residing in a county in this state held not subject to be locally assessed for taxation. *Mecklenburg County v. Piedmont Fire Ins. Co.*, 210 N. C. 171, 178, 185 S. E. 654, construing former § 7971(19), which was similar to the instant section.

§ 7971(131). Deductions and credits.—(1) All bona fide indebtedness owing by a taxpayer as principal debtor may be deducted by the list taker from the aggregate amount of the taxpayer's credits shown in items twenty-two, twenty-four, twenty-five, and twenty-six of section 7971(139): Provided, that such indebtedness may be deducted from the credits enumerated in item twenty-two only by the original producer of the articles named, and such indebtedness may be deducted from the credits enumerated in item twenty-four only in the case of fertilizer or fertilizer materials held by the taxpayer for his own use in agriculture during the current year.

No taxpayer shall be allowed to deduct more than his proportionate share of joint or joint and several debts unless upon a satisfactory showing that other obligors are insolvent.

For purposes of this sub-section the following shall not be regarded as bona fide indebtedness: (a) taxes of any kind owed by the taxpayer; (b) debts incurred to purchase assets which are not subject to taxation at the situs of such assets; (c) reserves, secondary liabilities and contingent liabilities, unless upon a satisfactory showing that the taxpayer will actually be compelled to pay the debt or liability; (d) debts owed by a corporation to another corporation of which it is parent or subsidiary or with which it is closely affiliated by

stock ownership, unless the credits created by such debts are listed for taxation at the situs of such credits.

(2) Private hospitals shall not be exempt from property taxes and other taxes lawfully imposed, but in consideration of the large amount of charity work done by them, the boards of commissioners of the several counties are authorized and directed to accept, as valid claims against the county, the bills of such hospitals for attention and services voluntarily rendered to afflicted or injured residents of the county who are indigent and likely to become public charges, when such bills are duly itemized and sworn to and are approved by the county physician or health officer as necessary or proper; and the same shall be allowed as payments on and credits against all taxes which may be or become due by such hospital on properties strictly used for hospital purposes, but to that extent only will the county be liable for such hospital bills: Provided, that the board of aldermen or other governing boards of cities and towns shall allow similar bills against the municipal taxes for attention and services voluntarily rendered by such hospitals to paupers or other indigent persons resident in any such city or town: Provided further, that the governing boards of cities and towns shall require a sworn statement to the effect that such bills have not and will not be presented to any board of county commissioners as a debt against that county, or as a credit on taxes due that county. The provisions of this sub-section shall not apply to the counties of Rockingham and Buncombe, nor to the cities and towns in said counties. (1937, c. 291, s. 602.)

§ 7971(132). Article subordinate to § 7880-(156)oo et seq.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], but rather shall they be subordinate thereto. (1937, c. 291, s. 603.)

Part 7. Real Property—Where and in Whose Name Listed

§ 7971(133). Place for listing real property.—All real property subject to taxation, and not hereinafter required to be assessed originally by the state board of assessment, shall be listed in the township or place where such property is situated. (1937, c. 291, s. 700.)

§ 7971(134). In whose name real property to be listed; information regarding ownership; permanent listing.—(1) Except as hereinafter specified, real property shall be listed in the name of its owner; and it shall be the duty of the owner to list the same. To this end the board of county commissioners in any county may require the register of deeds, when any transfer of title is recorded, other than a mortgage or deed of trust, to certify the same to the supervisor (or if there be no supervisor acting at the time, to the person in charge of the tax records), and the record of the transfer shall be entered upon the tax records. The certification from the register to the supervisor or other person shall include the name of the person conveying the property, the name of the person to whom it is conveyed, the township in

which the property is situated, a description of the property sufficient to identify it, and a statement as to whether the parcel is conveyed in whole or in part. For his services in this respect the register shall be allowed, if on fees, the sum of ten cents (10c) per transfer certified, to be paid by the county, and if on salary, such allowance as may be made by the board of commissioners.

It shall also be within the power of any board of commissioners, in its discretion, to require that each person recording such conveyance of real property shall, before presenting it to the register of deeds, present it to the person in charge of the tax records, in order that the conveyance may be noted on the tax records and in order that adequate information concerning the location of the property may be obtained from the person recording the conveyance. If such presentation is required by the commissioners of any county, the register of deeds of that county shall not accept for recording any conveyance which has not first been submitted to the person in charge of the tax records and such person has obtained information for the tax records which he regards as satisfactory. The commissioners may allow the person in charge of the tax records such compensation for this service as they deem appropriate, but they shall not require the person presenting the deed to pay any fee therefor.

It shall also be within the power of the commissioners to authorize the installation of a system for the permanent listing of real estate, under which all real estate may be carried forward by the supervisor, the list takers or some person or persons designated by the supervisor, in the name of the proper person as defined by this act, without requiring that such real estate be listed each year by such person. No such system shall be installed without the approval of the state board of assessment; and when such a system is installed, with the approval of the board, the board may authorize the commissioners to make such modifications of the listing requirements of this act as the board may deem necessary: Provided, that nothing herein shall require the board's approval for any such system installed prior to the ratification of this act.

Any county may, in the discretion of the commissioners, require that all real estate be listed only in the name of the owner of record at the close of the day as of which property is listed and assessed.

(2) For purposes of tax listing and assessing the owner of the equity of redemption in any property which is subject to a mortgage or deed of trust shall be considered the owner of such real estate.

(3) Real property of which a decedent died possessed, not under the control of an executor or administrator, may be assessed to the heirs or devisees of the deceased without naming them until they have given notice of their respective names to the supervisor and of the division of the estate. It shall be the duty of any executor or administrator having control of real property to list it in his fiduciary capacity until he shall have been divested of control of such property. The right of an administrator, administering upon the estate of an intestate decedent, to petition for the sale of real estate to make assets shall not be considered as

control of such real estate for purposes of this sub-division.

(4) A trustee, guardian or other fiduciary having legal title to real property shall be regarded as the owner of such property for purposes of tax listing, except as elsewhere in this section provided, and he shall list such property in his fiduciary capacity.

(5) Where undivided interests in real property are owned by tenants in common, not being a co-partners, the supervisor, upon request and in his discretion, may allow the property to be listed by the respective owners in accordance with their respective undivided interests.

(6) Real property belonging to a partnership or unincorporated association shall be listed in the name of such partnership or association.

(7) Real property owned by a corporation shall be listed in the name of the corporation.

(8) When land is owned by one party and improvements thereon or mineral, timber, quarry, water power or similar rights therein are owned by another party the parties may list their interests separately or may, in accordance with contractual relations between them, have the entire property listed in the name of the owner of the land. Where in such a case the land and improvements or rights are listed by the separate owners, the taxes levied on the improvements, or rights, shall be a lien on the land, and the land shall be subject to foreclosure for nonpayment of such taxes in the same manner as if such taxes were levied directly against said land: Provided, nothing herein contained shall prevent said taxes from being also a lien on said improvements, or rights.

(9) A life tenant or tenant for the life of another shall be considered the owner of real property for purposes of tax listing, but he shall indicate when listing such property that he is a life tenant. The taxes levied on property listed in the name of a life tenant shall be a lien on the entire fee: Provided, that this shall not prevent the life tenant from being liable for the taxes under section seven thousand nine hundred and eighty-two of the Consolidated Statutes.

(10) If the owner or person in whose name the real property should properly be listed, as set forth in the foregoing sub-divisions of this section, is unknown, the property may be listed in the name of the occupant, and either or both shall be liable for the taxes; and if there be no occupant, then it may be listed as property the owner of which is unknown: Provided, that wherever the property is so listed against the occupant or an unknown owner, or through error the property has been listed against some person other than the owner as defined in this section, and the name of the true owner is subsequently ascertained, the tax records may be changed so as to list said property against the owner, and the change shall have the same force and effect as if the property had been listed against the owner in the first instance. (1937, c. 291, s. 701.)

Part 8. Personal Property—Where and in Whose Name Listed

§ 7971(135). Place for listing tangible personal property.—(1) In general, all tangible personal property and polls shall be listed at the residence of the owner, except as otherwise provided in this

section. For purposes of this section the residence of a person who has two or more places in which he occasionally dwells shall be the place at which he resided for the longest period of time during the year preceding the date as of which property is assessed. The residence of a corporation, partnership or unincorporated association, domestic or foreign, shall be the place of its principal office in this state, and if a corporation, partnership or unincorporated association has no principal office in this state, its tangible personal property may be listed at any place at which said property is situated, provided said property has a taxable situs within the state.

(2) Farm products produced in this state, owned by the producers, shall be listed where produced.

(3) Tangible personal property taxable in this state, owned by an individual non-resident of this state, shall be listed where situated.

(4) Subject to the provisions of sub-section (2) of this section, tangible personal property shall be listed at the place where such property is situated, rather than at the residence of the owner, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property. Property stored in public warehouses and merchandise in the possession of a consignee or broker shall be regarded as falling within the provisions of this sub-division.

(5) The tangible personal property of a decedent whose estate is in the process of administration or has not been distributed shall be listed at the place at which it would be listed if the decedent were still alive and still residing at the place at which he resided at the time of his death.

(6) Tangible personal property held by a trustee, guardian or other fiduciary having legal title thereto shall be listed at the place where such property would be listed if the beneficiary were the owner; and if there are several beneficiaries in a case in which such property would be listed at the residence of the owner, the value of the property shall be listed at the various residences of the beneficiaries in accordance with their respective interests. This sub-division shall affect only cases in which the beneficiaries are residents of this state, but it shall apply whether the fiduciary is a resident or non-resident of this state. Property delivered by executors or administrators to themselves or other as testamentary trustees shall be controlled by this sub-section rather than by sub-section (5) of this section.

(7) In any case where the beneficiary is a non-resident of this state, tangible personal property having a taxable situs in this state, held by a trustee, guardian or other fiduciary having legal title, shall be listed at the place it would be listed if the trustee or other fiduciary were the beneficial owner of such property. (1937, c. 291, s. 800.)

§ 7971(136). Place for listing intangible property.—(1) Intangible property of an individual resident of this state shall be listed at the residence of the owner. For purposes of this sub-division the residence of a person who has two or more places in which he occasionally dwells shall be the place at which he resided for the longest

period of time during the year preceding the day as of which property is assessed.

(2) Intangible property of a decedent whose estate is in process of administration or has not been distributed shall be listed at the place of which the decedent died a resident, unless such decedent was a non-resident of this state, in which case said property shall be listed at the residence of the executor or administrator.

(3) Intangible property held by a trustee, guardian or other fiduciary having legal title to the property shall be listed at the residence of the beneficiary, if the beneficiary is a resident of this state; and if there are several beneficiaries, the value of the property shall be divided between their various residences in accordance with their respective interests, and any deductions therefrom shall be prorated in the same manner. If the beneficiary is a non-resident of the state, but the fiduciary is a resident of the state, the property shall be listed at the residence of the fiduciary. Intangible property delivered by executors or administrators to themselves or others as trustees shall be governed by this sub-section rather than sub-section (2) hereof.

(4) Intangible property of a domestic corporation, partnership, firm or unincorporated association shall be listed at the principal office of said corporation, partnership, firm or association in this state. If such corporation, partnership, firm or association has no principal office in this state, its intangible property may be listed in any county in which it transacts business.

(5) Every non-resident individual, foreign corporation, partnership, firm, business establishment, or unincorporated association doing business in this state shall list, at its principal office in the state, all intangible property which has acquired a business situs in this state. If such person, corporation, partnership, firm, business establishment or unincorporated association has no principal office in this state, such intangible property shall be listed in any county in which business is transacted.

(6) Intangible property actually and permanently invested in business in another state need not be listed at any place in this state. (1937, c. 291, s. 801.)

§ 7971(137). In whose name personal property should be listed.—(1) In general, personal property shall be listed in the name of the owner thereof on the day as of which property is assessed; and it shall be the duty of the owner to list the same. The owner of the equity of redemption in personal property subject to a chattel mortgage shall be considered the owner of the property; and the vendee of personal property under a conditional bill of sale, or under any other sale contract by virtue of which title to the property is retained in the vendor as security for the payment of the purchase price, shall be considered the owner of the property, provided he has possession of such property or the right to use the same.

(2) Personal property of a corporation, partnership, firm or unincorporated association shall be listed in the name of such corporation, partnership, firm, or unincorporated association.

(3) Personal property of which a decedent died possessed, not under the control of an executor or administrator, may be assessed to the next of kin

or legatees of the decedent without naming them until they have given notice of their respective names to the supervisor and have likewise given notice of the distribution of the estate; and for this purpose such next of kin or legatees may be designated as "heirs." It shall be the duty of an executor or administrator having control of such property to list it in his fiduciary capacity until he shall have been divested of such control.

(4) A trustee, guardian, or other fiduciary having legal title to personal property shall be regarded as the owner thereof for purposes of this section.

(5) In cases in which two or more persons are joint owners of personal property, each shall list the value of his interest.

(6) If any dispute shall arise as to the true owner of personal property, the person in possession thereof shall be regarded as the owner unless the list taker or supervisor shall be convinced that some other person is the true owner. (1937, c. 291, s. 802.)

§ 7971(138). Article not in conflict with § 7880(156)oo et seq.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], but rather shall they be subordinate thereto. (1937, c. 291, s. 803.)

Part 9. What Tax List Shall Contain and Miscellaneous Matters Affecting Listing

§ 7971(139). What the tax list shall contain.—Each taxpayer or person whose duty it is to list property for taxation shall file with the proper list taker a tax list setting forth, as of the day on which property is assessed, the following information:

(1) The name and residence address of the taxpayer.

(2) The age of the taxpayer, if he is a male taxpayer, listing in the township of his residence.

(3) Each parcel of real property owned or controlled in the township, not sub-divided into lots, together with the number of acres cleared for cultivation, waste land, woods and timber, mineral, quarry lands, and lands susceptible of development for water power, and the total acreage. Each separate parcel shall be described by name, if it has one, and by specifying at least two adjoining landowners, or by such other description as shall be sufficient to locate and identify said land by parol testimony. If all or part of such land shall lie within the boundaries of any incorporated town or any district in which a special tax is levied, such fact shall be specified.

(4) Each parcel of manufacturing property owned or controlled in the township, not sub-divided into lots, together with the number of acres in said parcel or the dimensions thereof, the name of such parcel, if any, and the names of at least two adjoining landowners, or such other description as shall be sufficient to locate and identify said property by parol testimony. If all or part of such land shall lie within the boundaries of any incorporated town or any district in which a special tax is levied, such fact shall be specified.

(5) Each lot owned or controlled in the township, together with the dimensions of said lot, the location of said lot, its street number, if any, its

number or location on any map filed in the office of the register of deeds, or such other description as shall be sufficient to locate and identify it by parol testimony. If any such lot shall lie within the boundaries of an incorporated town or any district in which a special tax is levied, such fact shall be specified.

(6) In conjunction with the listing of any real property listed under sub-divisions (3), (4), or (5) of this section, a short description of any improvements thereon, belonging to the taxpayer listing such real property, shall be given. And if some person other than the taxpayer listing such real property shall own mineral, quarry, timber, water power or other separate rights with respect thereto, or shall own any improvements thereon, such fact shall be specified, together with the name of the person owning such rights or improvements, and a short description of such rights or improvements; though the owner of the land may or may not list such separate rights or improvements for taxes, in accordance with the provisions of this act.

(7) All mineral, quarry, timber, water power or other separate rights owned by the taxpayer with respect to the lands of another, and all improvements owned by such taxpayer located upon the lands of another. Such rights or improvements shall be listed separately with respect to each parcel or lot of land which is listed separately by the owner thereof, and such parcel or lot shall be identified in the same manner as it is identified on the tax list of the person listing the same: Provided, that such rights or improvements shall not be taxed against the owner thereof if, under the provisions of this act, they are listed for taxes by the owner of the land.

(8) Every person listing real property shall list, in connection with each parcel or lot, every encumbrance thereon, together with the amount due on such encumbrance and the name and address of the person to whom such amount is due.

(9) The amount and value of all machinery and fixtures.

(10) A special description of any improvements, having a value in excess of one hundred (\$100.00) dollars, which have been begun, erected, damaged or destroyed since the time of the last assessment of such property.

(11) A list of horses, mules, jacks and jennets, cattle, hogs, sheep, goats and other livestock, poultry and dogs, with the number and value of each class shown separately.

(12) The number of open female dogs and the number of other dogs.

(13) The amount and value of farm machinery, farm utensils, and carriages, carts, wagons, buggies, or other vehicles and harness.

(14) The amount and value of household and kitchen furniture, libraries, scientific instruments, tools of mechanics, wearing apparel, and provisions of all kinds.

(15) The amount and value of merchandise, manufactured goods, or goods in the process of manufacture. This sub-division is intended to include all tangible personal property whatever held for the purpose of sale or exchange or held for use in the business of the taxpayer.

(16) The amount and value of all office furniture, fixtures and equipment.

(17) The number and value of all motor vehicles, tractors, trailers, bicycles, flying machines, pleasure boats of any and all kinds, and their appliances.

(18) The number and value of all seines, nets, fishing tackle, boats, barges, schooners, vessels, and all other floating property.

(19) The number and value of billboards and signboards and the value of other property used in outdoor advertising.

(20) The number and value of radios, talking machines and musical instruments.

(21) The value of plated or silverware, clocks, watches, firearms and jewelry.

(22) The amount and value of all cotton, tobacco or other farm products owned by the original producer, or held by the original producer in any public warehouse and represented by warehouse receipts, or held by the original producer for any co-operative marketing or grower's association, together with a statement of the amount of any advance against said products.

(23) The amount and value of all other cotton, tobacco or other farm products.

(24) The amount and value of all fertilizer and fertilizer materials.

(25) The amount of all money on hand.

(26) All solvent credits, with accrued interest thereon, whether money or deposit, postal savings, securities, mortgages, bonds, notes, bills of exchange, certified checks, accounts receivable, annuities, royalties or in whatever other form of credit, not especially exempted by law, and whether owing by any state or government, county, city, town, township, district, person, persons, company, firm, or corporation within or without the state.

(27) An itemized list of all debts of the taxpayer claimed as a deduction under the provisions of this act, together with the amount of each debt and the name and address of the person to whom such debt is owing.

(28) The value and a description of all other property whatever, not especially exempted by law.

(29) An itemized list of any type of personal property when such itemization is required by the list taker or supervisor.

(30) A statement setting forth a list of license taxes for which the person, firm or corporation listing may be liable to the state under the provisions of Schedule "B" of the Revenue Act [§ 7880(30) et seq.].

(31) The oath of the taxpayer hereinafter set forth. (1937, c. 291, s. 900.)

An amount set apart by a mutual insurance company as a reserve for the rebate of unearned premiums to its policyholders upon cancellation of policies in accordance with its by-laws is properly deducted by the insurance company in listing its solvent credits for taxation. *Hardware Mut. Fire Ins. Co. v. Stinson*, 210 N. C. 69, 185 S. E. 449, construing former § 7971(46), now repealed.

§ 7971(140). Duty to list; penalty for failure; special penalty for failure to list solvent credits.—It shall be the duty of every person, firm or corporation, in whose name any property or poll is to be listed under the terms of this act, to list said property or poll with the proper list taker or the supervisor, within the time allowed by law, on a list setting forth the information required by this act. In addition to all other penalties prescribed

by law, any person, firm or corporation whose duty it shall be to list any poll or property, real or personal, who wilfully fails, refuses or neglects to list the same within the time allowed by law, or who removes or conceals property for the purpose of evading taxation, shall be guilty of a misdemeanor; and any person, firm or corporation aiding or abetting the removal or concealment of property for the purpose of evading taxation shall be guilty of a misdemeanor. The failure to list shall be prima facie evidence that such failure was wilful, and the board of county commissioners shall present the names of all such persons, firms and corporations to the grand jury.

If any person, firm or corporation, with a view to evading the payment of taxes, shall fail or refuse to list with the list taker or supervisor any bonds, notes, accounts receivable or other solvent credits subject to taxation under this act, the same shall not be recoverable at law or by suit in equity in any court in this state unless they shall be listed, and the tax and all penalties thereon completely paid, prior to the time of the beginning of such action at law or suit in equity. (1937, c. 291, s. 901.)

§ 7971(141). Oath of the taxpayer.—Before accepting any completed tax list, it shall be the duty of the list taker to read and actually to administer the following oath (or so much thereof as may be pertinent) which shall be subscribed by the person filing the list:

"I,, do solemnly swear (or affirm) (that I am an officer or agent of the taxpayer named on the attached list, that as such I am duly authorized to submit said list, that I am familiar with the extent and value of all said taxpayer's property subject to taxation in this township) that the above and foregoing list is a full, true and complete list of all and each kind of property which it is the duty of the above-named taxpayer to list as owner or fiduciary, as said list indicates, in Township, County, North Carolina; and that I have not in any way connived at the violation or evasion of requirements of law in relation to the assessment of property; so help me, God.

....."
(Signature)

So much of the foregoing oath as appears in the second parentheses shall be used only in cases in which the list is submitted by an officer or agent. Any list taker who accepts a list without administering said oath shall be guilty of a misdemeanor. (1937, c. 291, s. 902.)

§ 7971(142). Listing by agents.—Corporations, partnerships, firms and unincorporated associations, females, non-residents of the township in which the property is to be listed, and persons physically unable to attend and file a list may have their lists submitted and sworn to by an officer or agent; but the list shall be filed in the name of the principal. (1937, c. 291, s. 903.)

§ 7971(143). Listing by mail.—All tax lists submitted by mail must be accompanied by the oath of the taxpayer, as prescribed in this act, duly sworn to before a notary public or other officer authorized to administer oaths, and must be mailed to the supervisor. The supervisor may ac-

cept or reject any such list in his discretion. (1937, c. 291, s. 904.)

§ 7971(144). Length of the listing period; preliminary work.—Tax listing shall begin on the day as of which property is assessed (or on the first business day thereafter if said day is a Sunday or a holiday) and shall continue for thirty days. The board of county commissioners of any county may extend the time for listing for not more than an additional thirty days: Provided, that in years of quadrennial assessment the board of county commissioners may extend the time for listing for not more than an additional sixty days.

Nothing in this section shall be construed to prevent any preparatory work, prior to the beginning of listing, which may be necessary or expedient in connection with an efficient listing or assessing of property; nor shall it prevent the assessment of real property by the list takers prior to the actual time at which it is listed by its owner or carried forward on the tax records: Provided, that no final assessment shall be made by a list taker prior to the day as of which property is required by law to be assessed. (1937, c. 291, s. 905.)

§ 7971(145). Records of tax exempt property.—The person making up the tax records shall enter, in regular order, the name of the owner, a clear description of all real and personal property exempt from taxation, together with statement of its value, for what purpose used, and the rent, if any, obtained therefrom. Each list taker shall secure the necessary information with respect to such property in his township. The list of such exempt property, when completed, shall be delivered by the county supervisor of taxation to the register of deeds of the county on or before the first day of October, and the register of deeds, on or before the first day of November, shall make duplicates thereof and transmit such duplicates to the state board of assessment and shall file the original list of exempt property in his office. (1937, c. 291, s. 906.)

§ 7971(146). Forms for listing and assessing property.—All forms and books used in the listing and assessing of property for taxation shall have the approval of the state board of assessment. The board may, in its discretion, design and prescribe such forms and make arrangements for their purchase and distribution through the division of purchase and contract, the cost of same being billed to the counties. (1937, c. 291, s. 907.)

§ 7971(147). Article subordinate to § 7880-(156)oo et seq.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], but rather shall they be subordinate thereto. (1937, c. 291, s. 908.)

Part 10. Special Provisions Affecting Motor Vehicle Owners, Warehousemen, etc.

§ 7971(148). Information to be given by motor vehicle owners applying for license tags.—Every motor vehicle owner applying to the state department of revenue for motor vehicle license tags shall specify in the application the county in

which each such motor vehicle is subject to ad valorem taxation. If any such vehicle is not subject to ad valorem taxation in any county of this state, such fact, with the reason therefor, shall be stated in the application. No state license tags shall be issued to any applicant until the requirements of this sub-division have been met. The commissioner of revenue shall, upon request from any county, send to the supervisor of such county a list of motor vehicles subject to ad valorem taxation in such county as shown by the commissioner's records of applications filed during the year preceding the day as of which property is to be assessed, and shall charge the county the sum of thirty cents (30c) per hundred names for the same, said amount to be used by the commissioner as compensation for the preparation of said list. (1937, c. 291, s. 1000.)

§ 7971(149). Warehouses and co-operative growers' or marketing associations to furnish lists.—(1) Every warehouse company or corporation and every growers' or marketing association receiving for storage cotton, tobacco or other products, commodities or property, and issuing warehouse receipts for same, shall, on the day as of which property is assessed, furnish to the supervisor of the county in which such property is stored a full and complete list of all persons, corporations, partnerships, firms or associations for whom such property is stored, except in cases in which farm produce is stored for its original producer who is a resident of another county in this state, together with the amount of such property stored for each owner and the amount advanced against such property by the warehouse or association. In all cases in which farm produce is stored for its original producer, who is a resident of another county in this state, the names of such producers shall be sent to the supervisors of the respective counties in which such producers reside, together with the amount of such produce stored for them and the amount advanced against such produce by the warehouse or association.

(2) Warehouse companies and corporations and growers' and marketing associations shall not be liable for taxation on the property stored with them by others, provided lists of the owners and amounts of such property are furnished to the respective supervisors under the provisions of subdivision (1) of this section. If such lists are not so furnished within fifteen days after the day as of which property is assessed, such warehouse or association shall be liable to the respective counties for the tax upon the full value of such property; and if failure to furnish such list is continued for ten days after demand for same by the supervisor of any county, such warehouse or association shall be liable for a penalty of two hundred fifty dollars (\$250.00), in addition to the taxes, to be recovered by the proper county in an action in the superior court, and both tax and penalty may be recovered in the same action. (1937, c. 291, s. 1001.)

§ 7971(150). Reports by consignees and brokers.—Every person, corporation, partnership, or unincorporated association in possession of property on consignment, and all brokers dealing in tangible personal property who have in their possession such property belonging to others, shall

file with the supervisor of taxation of the county in which such property is located a full and complete list of the owners of such property, together with the amount of such property owned by each: Provided, that if such property is farm produce owned by the original producer, who is a resident of this state, the name of the owner and the amount of such property shall be reported to the supervisor of the county of which such owner is a resident. Consignees and brokers failing to make such reports shall be liable to payment of the tax, and a penalty of two hundred fifty dollars (\$250.00), in the same manner and under the conditions set forth in subdivision two of section 7971(149). (1937, c. 291, s. 1002.)

§ 7971(151). Private banks, bankers, brokers and security brokers.—Every bank (not incorporated), banker, broker or security broker, at the time fixed by this act for listing and assessing all real and personal property, shall make out and furnish to the list takers and assessors a sworn statement showing:

(1) The amount of property on hand and in transit.

(2) The amount of funds owned in the hands of other banks, bankers or brokers.

(3) The amount of checks or other cash items, the amount of which is not included in either of the preceding items.

(4) The amount of bills receivable, discounted or purchased, bonds and other credits due or to become due, including interest receivable and accrued, but not due, and interest due and unpaid.

(5) All other property appertaining to said business, other than real estate, which real estate shall be listed under this act.

(6) The amount of deposits made with them by any other person, firm or corporation.

(7) The amount of all accounts payable, other than current deposit accounts.

The aggregate amount of the first, second and third items in said statements shall be listed as other similar personal property is listed under this act. The aggregate amount of the sixth and seventh items shall be deducted from the aggregate amount of the fourth item of said statement, and the remainder, if any, shall be listed as a credit. (1937, c. 291, s. 1003.)

§ 7971(152). Persons, firms, banks and corporations dealing in securities on commission taxed as a private banker.—No person, bank, or corporation, without a license authorized by law, shall act as a stock broker or private banker. Any person, bank, or corporation that deals in foreign or domestic exchange, certificates of debt, shares in any corporation or charter companies, bank or other notes, for the purpose of selling the same or any other thing for commission or other compensation, or who negotiates loans upon real estate securities, shall be deemed a security broker. Any person, bank, or corporation engaged in the business of negotiating loans on any class of security or in discounting, buying or selling negotiable or other papers or credits, whether in an office for the purpose or elsewhere, shall be deemed to be a private banker. Any person, firm, or corporation violating this section shall pay a fine of not less than one hundred nor more than five hundred dollars for each offense. (1937, c. 291, s. 1004.)

§ 7971(153). Partnerships; liability of partners for tax.—For the purpose of listing and assessing property, a co-partnership shall be treated as an individual, and its property, real and personal, shall be listed in the name of the firm. Each partner shall be liable for the whole tax. (1937, c. 291, s. 1005.)

§ 7971(154). Article not to be construed in conflict with § 7880(156)oo et seq.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], but rather shall they be subordinate thereto. (1937, c. 291, s. 1006.)

Part 11. Procedure Subsequent to the Close of the Tax Listing Period

§ 7971(155). Review of abstracts by supervisor and list takers.—After the close of the list taking period, and not later than the first meeting of the board of equalization and review, the supervisor shall examine the abstracts turned in by each list taker, and, unless he is satisfied that said list taker has satisfactorily performed the duties of a list taker, shall not approve payment of any compensation to said list taker.

The supervisor shall meet with each of the list takers not later than the first meeting of the board of equalization, for the purpose of reviewing the abstracts generally to ascertain if the same scales of value have been used in all townships in the county, and if property has been listed at the valuation prescribed by law. (1937, c. 291, s. 1100.)

§ 7971(156). Making up the tax records.—The list takers for their respective townships, or such other persons as the commissioners may designate, shall make out, on forms approved by the state board of assessment, tax records which may consist of a scroll designed primarily to show tax valuations and a tax book designed primarily to show the amount of taxes or may consist of one record designated to show both valuations and taxes. Such records for each township shall be divided into four parts: (1) White individual taxpayers (including lists filed by corporate fiduciaries for white individual beneficiaries); (2) colored individual taxpayers (including lists filed by corporate fiduciaries for colored individual beneficiaries); (3) Indian individual taxpayers (including lists filed by corporate fiduciaries for Indian individual beneficiaries); and (4) corporations, partnerships, business firms and unincorporated associations. Such records shall show at least the following information:

(a) The name of each person whose property is listed and assessed for taxation, entered in alphabetical order.

(b) The amount of valuation of real property assessed for county-wide purposes (divided into as many classes as the state board may prescribe).

(c) The amount of valuation of personal property assessed for county-wide purposes (divided into as many classes as the state board may prescribe).

(d) The total amount of real and personal property valuation assessed for county-wide purposes.

(e) The amount of ad valorem tax due by each taxpayer for county-wide purposes.

(f) The amount of poll tax due by each taxpayer.

(g) The amount of dog tax due by each taxpayer.

(h) The amount of valuation of property assessed in any special district or sub-division of the county for taxation.

(i) The amount of tax due by each taxpayer to any special district or sub-division of the county.

(j) The total amount of tax due by the taxpayer to the county and to any special district, sub-division or sub-divisions of the county.

All changes in valuations effected between the close of the listing period and the meeting of the board of equalization and review shall be reflected on such records, and so much of such records as may have been prepared shall be submitted to the board at its meetings. Changes made by said board shall also be reflected upon such records, either by correction, rebate or additional charge. (1937, c. 291, s. 1101.)

§ 7971(157). Tax receipts and stubs.—Such persons as the county commissioners may designate shall fill out the receipts and stubs for all taxes charged upon the tax books. The form of such receipts and stubs shall be approved by the state board of assessment and shall show at least the following:

(a) The name of the taxpayer charged with taxes.

(b) The amount of valuation of real property assessed for county-wide purposes.

(c) The amount of valuation of personal property assessed for county-wide purposes.

(d) The total amount of valuation of real and personal property assessed for county-wide purposes.

(e) The rate of tax levied for each county-wide purpose, the total rate for all county-wide purposes, and the rate levied for any special district or sub-division of the county, which tax is charged to the taxpayer.

(f) The amount of the valuation of property assessed in any special district or sub-division of the county.

(g) The amount of ad valorem tax due by the taxpayer for county-wide purposes.

(h) The amount of poll tax due by the taxpayer.

(i) The amount of dog tax due by the taxpayer.

(j) The amount of tax due by the taxpayer to any special districts or sub-divisions of the county.

(k) The total amount of tax due by the taxpayer to the county and to any special district, sub-division or sub-divisions of the county.

(l) Amount of discounts.

(m) Amount of penalties. (1937, c. 291, s. 1102.)

§ 7971(158). Disposition of tax records and receipts.—The tax records shall be filed in the office of the supervisor or official computing the taxes or the office of the accountant or clerk to the board of commissioners, as the commissioners may direct. The tax receipts and stubs shall be delivered to the sheriff or tax collector on the first Monday in October of the year one thousand nine hundred and thirty-seven and on the first Monday in September of the year one thousand nine hundred and thirty-eight and annually thereafter,

provided he has made settlement as by law required, and the sheriff or tax collector shall receipt for the same. In the discretion of the commissioners, a duplicate copy of the tax book may be made and delivered to the sheriff or tax collector at the same time.

A list of all appeals pending before the state board of assessment shall be delivered with said receipts; and there shall be delivered with said receipts an order, a copy of which shall be spread upon the minutes of the commissioners, directing the sheriff or tax collector to collect said taxes, which order shall have the force and effect of a judgment and execution against the property, real and personal, charged in the tax book and receipts, and shall be in substantially the following form:

"North Carolina,County,City. To the Sheriff or Tax Collector of.....County, or.....City, or.....Town:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax books, filed in the office of, and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth, and such taxes are hereby declared to be a first lien on all real property of the respective taxpayers in.....County, orCity or Town, and this order shall be a full and sufficient authority to direct, require and enable you to levy on and sell any real or personal property of such taxpayers, for and on account of the taxes due by them, and all interest and costs on account thereof, in accordance with law.

Witness my hand and official seal, this....day of....., 19....

.....(Seal)

Chairman, Board of Commissioners.

Attest:

.....

Clerk of Board." (1937, c. 291, s. 1103.)

§ 7971(159). Compensation of officer computing taxes.—The board of county commissioners shall make an order for the payment to the register of deeds, auditor, tax clerk, supervisor, or other official such sum as may be in their discretion a proper compensation for the work of computing taxes, making out the tax book and copies thereof, and the making of such reports as may be required by the state board of assessment; but the compensation allowed for computing the taxes and making out the tax book is not to exceed ten cents (10c) for each name appearing on the tax book, which shall include the original and duplicate tax book and also the receipts and stubs provided for in this act. (1937, c. 291, s. 1104.)

§ 7971(160). County board of equalization and review.—(1) Personnel. — The county board of equalization and review of each county shall be composed of the board of county commissioners. Nothing in this act shall be construed as repealing any law creating a special board of equalization and review, or creating any board charged with the duty of equalization and review in any county.

(2) Compensation.—The members of the board of equalization and review shall be allowed the same per diem compensation and traveling expense, while actually engaged in the performance

of their duties, as is ordinarily paid to the members of the board of county commissioners, such compensation to be paid by the county.

(3) Oath.—Before entering upon their duties each member of the board of equalization and review shall take and subscribe the following oath and file the same with the clerk of the board of county commissioners: "I do solemnly swear (or affirm) that I will faithfully discharge my duties as a member of the Board of Equalization and Review of County, North Carolina; and that I will not allow my actions as a member of said board to be influenced by personal or political friendships or obligations.

....."

(Signature)

(4) Clerk.—The supervisor shall act as clerk to said board, shall be present at all meetings and give to the board such information as he may have or can obtain with respect to the valuation of taxable property in the county.

(5) Time of Meeting.—Said board shall hold its first meeting on the eleventh Monday following the day on which tax listing began, and may adjourn from time to time as its duties may require; but it shall complete its duties not later than the third Monday following its first meeting.

(6) Notice of Meeting. — Notice of the time, place and purpose of the first meeting of said board shall be given by publishing said notice at least three times in some newspaper published in the county, the first publication to be at least ten days prior to said meeting.

(7) Powers and Duties.—(a) It shall be the duty of the board of equalization and review to equalize the valuation of all property in the county, to the end that such property shall be listed on the tax records at the valuation required by law; and said board shall correct the tax records for each township so that they will conform to the provisions of this act.

(b) The board shall, on request, hear any and all taxpayers who own or control taxable property assessed for taxation in the county in respect to the valuation of such property or the property of others.

(c) The board shall examine and review the tax lists of each township for current year; shall, of its own motion or on sufficient cause shown by any person, list and assess any real or personal property or polls subject to taxation in the county omitted from said lists; shall correct all errors in the names of persons, in the description of property, and in the assessment and valuation of any taxable property appearing on said lists; shall increase or reduce the assessed value of any property which in their opinion shall have been returned below or above the valuation required by law; and shall cause to be done whatever else shall be necessary to make said lists comply with the provisions of this act: Provided, that said board shall not change the valuation of any real property from the value at which it was assessed for the preceding year except in accordance with the terms of sections 7971(111) and 7971(112).

(d) The board may appoint committees, composed of its own members or other persons, to assist it in making any investigations necessary in its work. It may also employ expert appraisers in

its discretion. The expense of the employment of committees or appraisers shall be borne by the county: Provided, that the board may, in its discretion, require the taxpayer to pay the cost of any appraisal by experts demanded by him when said appraisal does not result in material reduction of the valuation of the property appraised and where such valuation is not subsequently reduced materially by the board or by the state board of assessment.

(e) The board may subpoena witnesses, or books, records, papers and documents reasonably considered to be pertinent to the decision of any matter pending before it; and any member of the board may administer oaths to witnesses in connection with the taking of testimony. The chairman of the board shall sign the subpoena, and such subpoena shall be served by any officer qualified to serve subpoenas. (1937, c. 291, s. 1105.)

§ 7971(161). Giving effect to the decisions of the board.—All changes in names, descriptions or valuations made by the board of equalization shall be reflected upon the tax records by correction, rebate or additional charge; and when all such changes have been given effect, and the scroll or tax book has been totaled, the members of the board of equalization, or a majority thereof, shall sign a statement at the end of the scroll or tax book to the effect that the scroll is the fixed and permanent tax list and assessment roll for the current year, subject to the provisions of this act. The omission of such endorsement shall not affect the validity of said scroll or tax book or of any taxes levied on the basis of the valuations appearing in it. (1937, c. 291, s. 1106.)

§ 7971(162). Appeals from the board of equalization and review to the state board of assessment.—Any property owner, taxpayer, or member of the board of county commissioners may except to the order of the board of equalization and review and appeal therefrom to the state board of assessment by filing a written notice of such appeal with the clerk to the board of county commissioners within sixty days after the adjournment of the board of equalization and review. At the time of filing such notice of appeal the appellant shall file with the clerk to the board of county commissioners a statement in writing of the grounds of appeal, and shall, within ten days after filing such notice of appeal with the clerk to the board of county commissioners, file with the state board of assessment a notice of such appeal and attach thereto a copy of the statement of the grounds of appeal filed with the clerk to the board of county commissioners.

The state board of assessment shall fix a time for the hearing of such appeal, and shall hear the same in the city of Raleigh, or such other place within the state as the said board may designate; shall give notice of time and place of such hearing to the appellant, appellee, and to the clerk to the board of county commissioners at least ten days prior to the said hearing; shall hear all the evidence or affidavits offered by the appellant, appellee, and the board of county commissioners, shall reduce, increase, or confirm the valuation fixed by the board of equalization and review and enter it accordingly, and shall deliver to the clerk of the

board of county commissioners a certified copy of such order, which valuation shall be entered upon the fixed and permanent tax records and shall constitute the valuation for taxation. (1937, c. 291, s. 1107.)

§ 7971(163). Powers of the commissioners with respect to the records after adjournment of the board of equalization.—After the board of equalization has finished its work and the changes effected by it have been given effect on the tax records, the board of county commissioners may not authorize any changes to be made on said records except as follows:

(1) To give effect to the decisions of the state board of assessment on appeal.

(2) To add to the records any valuation certified by the state board of assessment with respect to property assessed in the first instance by said state board, or to give effect to any valid corrections made in such assessments by the state board.

(3) To correct the name of any taxpayer appearing on said records erroneously, or to substitute the name of the person who should have listed property for the name appearing on the records as listing said property, or to correct descriptions on said records, and any such corrections or substitutions shall have the same force and effect as if the name of the taxpayer or the description had been correctly listed in the first instance.

(4) To correct valuations or taxes appearing erroneously on the records as the result of clerical errors.

(5) To add any discovered property under the provisions of this act.

(6) To reassess property when the supervisor reports that, since the completion of the work of the board of equalization, facts have come to his attention which render it advisable to raise or lower the assessment of some particular property of a given taxpayer: Provided, that no such reassessment shall be made unless it could have been made by the board of equalization had the same facts been brought to the attention of said board of equalization: Provided further, that this shall not authorize reassessment because of events or circumstances not taking place or arising until after the tax listing day.

(7) The board of county commissioners may give the supervisor general authority to make any changes under this section except those under subsection (6); but neither the board nor the supervisor shall make any changes under subsections (3) or (6) which adversely affect the interests of any taxpayer without giving such taxpayer written notice and an opportunity to be heard prior to final determination. (1937, c. 291, s. 1108.)

§ 7971(164). Discovery and assessment of property not listed during the regular listing period.—

(1) Duty of Commissioners, Supervisors and List Takers; Carrying Forward Real Estate.—It shall be the duty of the members of the board of commissioners, the supervisor and the list takers to be constantly looking out for property and polls which have not been listed for taxation. After any tax list or abstract has been delivered to a list taker, the supervisor or the board of county commissioners, and such list taker, supervisor or board of county commissioners shall have reason to be-

lieve or sufficient evidence upon which to form a belief that the person, firm or corporation making such list or abstract, in person or by agent, has other personal property, tangible or intangible, money, solvent credits, or other thing liable for taxation, they or either of them shall take such action as may be needful to get such property on the tax list.

Either the list takers for the respective townships, the clerical assistants to the supervisor or the supervisor, as the supervisor may designate, shall examine the tax lists for the current year and the tax records for the preceding year, and carry forward all real property which was listed for the preceding year which has not been listed for the current year. In the discretion of the supervisor, such property may be listed on an abstract signed by the official or employee carrying it forward in the name of the taxpayer, or may be entered directly on the tax scroll or tax book by such official or employee. When such property is so listed in the name of the owner or in the name of the person last listing the same, the listing shall be as valid in every respect as if made by the owner: Provided, that such listing shall not render any person individually liable to pay the taxes who is not under a duty to list such property.

(2) Procedure upon Discovery.—When property or polls are discovered they shall be listed in the name of the taxpayer by the supervisor or some person designated by him. The clerk to the board of commissioners or the supervisor shall mail a notice to the taxpayer at his last known address (or, if unknown, to the occupant or person in possession of such property) to the effect that the board of equalization at a designated meeting (or the county commissioners at their next regular meeting, in case the discovery is not made in time for consideration by the board of equalization) will assess the value of said property or approve the listing of said poll. At such meeting the board shall hear any objections presented by said taxpayer, render its decision and, if necessary under said decision, assess said property, subject to appeal to the state board of assessment, or approve the listing of said poll. Said property and polls may then be added to the regular tax records or placed in a separate record designated "Late Listings," which shall have the same force and effect as the regular records: Provided, nothing herein shall prevent valuation of such property or listing of such polls by agreement between the supervisor and taxpayer without action by the board of equalization or board of commissioners: Provided further, nothing herein shall prevent the carrying forward of real estate, listed for the prior year in accordance with the terms of this act, without notice to the owner or last person listing said realty unless, in years other than revaluation years, the valuation of such property is raised.

All property and polls not listed during the regular listing period shall, when eventually listed under this section or by the person carrying forward real estate, immediately be subject to the taxes for the various years for which listed or assessed, together with the penalties hereinafter set forth.

(3) Assessment for Previous Years; Penalties.—The county commissioners may assess any such property or list such poll for the preceding years during which it escaped taxation, not exceeding five, in addition to the current year. When real property is discovered which should have been listed for the current year it shall be presumed that it should have been listed by the same taxpayer for the preceding five years unless the taxpayer shall produce satisfactory evidence that such property was actually listed for taxes during those years or some of them: Provided, that this presumption shall not apply when real property is carried forward from the preceding year's records.

When personal property is discovered which should have been listed for the current year, it shall be presumed that such property should have been listed by the same taxpayer for the preceding five years, unless the taxpayer shall produce satisfactory evidence that such property was not in existence, that it was actually listed for taxation or that it was not his duty to list the same during said years or some of them. Where it is shown that such property should have been listed by some other taxpayer during a part or all of such preceding years, it may be assessed against such other taxpayer for the proper years, with the penalties as hereinafter prescribed.

In a proper case, property may be listed for one or more prior years during which it escaped taxation, even though it has been regularly listed for the current year, is no longer in existence or is no longer subject to taxation in this state.

The penalty for failure to list property or a poll before the close of the regular listing period shall be ten per cent (10%) of the tax levied for the current year on such property or poll. Where such property or poll is taxed for years preceding the current year, the penalty, in addition to that for the current year, shall be ten per cent (10%) per annum. The minimum penalty shall be one dollar (\$1.00). Taxes assessed for years preceding the current year shall be assessed at the rate of tax prevailing in the various preceding years.

The taxes and penalties for each year shall be shown separately on the records, but for the purpose of tax collection and foreclosure the total of all such taxes and penalties shall be regarded as taxes for the current year; and the schedule of discounts and penalties for payment or nonpayment of current taxes shall apply to such taxes and penalties for failure to list, despite the fact that such taxes and penalties for failure to list may not have been levied until the penalties for failure to pay have already accrued.

(4) Commissioners' Power to Compromise.—The board of county commissioners or the governing body of any municipal corporation is hereby authorized and empowered to settle or adjust all claims for taxation arising under this section or any other section authorizing them to place on the tax list any property omitted therefrom.

(5) Application to Cities and Towns.—The provisions of this section shall extend to all cities, towns and other municipal corporations having power to tax property or polls, and the power conferred and the duties imposed upon the board of county commissioners shall be exercised and

performed by the governing body of the municipal corporation.

(6) **Power to Employ Searchers.**—The county commissioners, either separately or in conjunction with one or more municipal corporations in the county, may employ one or more competent men to make a diligent search and to discover and report to the board or the supervisor any unlisted property within the county, to the end that the same may be listed and assessed for taxation as provided in this section: Provided, nothing herein shall be construed as allowing a board of commissioners to appoint a tax collector unless it is otherwise authorized to do so by law.

(7) **Tax Receipts.**—Tax receipts for the taxes and penalties assessed against the property discovered shall be made up under the provisions of this act shall be delivered to the sheriff or tax collector, who shall be charged with the same, and shall have the same force and effect and shall be a lien on the property in the same manner as if they had been delivered to the sheriff or tax collector at the time of the delivery of the regular tax bills for the current year.

(8) **Appeals.**—Appeal may be had from the assessment fixed by the board of equalization or commissioners to the state board of assessment. Notice of said appeal must be served upon the clerk to the board of commissioners within sixty days after the assessment is fixed, and said appeal shall be in conformity with the provisions of this act respecting appeals from boards of equalization. (1937, c. 291, s. 1109.)

Editor's Note.—The cases in the following note construe the somewhat similar provisions of former § 7971(50), now repealed.

Discovery and Listing of Omitted Property.—This section provides for discovery of taxable property not listed, by certain tax authorities, and listing same. *Hardware Mut. Fire Ins. Co. v. Stinson*, 210 N. C. 69, 77, 185 S. E. 449.

Where the plaintiff guardian paid taxes on property of his ward, and thereafter, in accordance with a ruling that the property was nontaxable, obtained a refund of the tax and did not list the property again, and the property of the ward was not exempt from taxation, it was held that the prior ruling of the county commissioners to the effect that the property was nontaxable does not prevent them from listing the property for taxation for the prior five years, including the year for which the tax was refunded. *Lawrence v. Shaw*, 210 N. C. 352, 186 S. E. 504.

Compromise Settlement Is Binding Unless Made in Bad Faith.—In the absence of a finding that the board of commissioners acted in bad faith in making a compromise settlement of a tax, or abused its discretion in so doing, mandamus to compel the commissioners to list and assess will be denied. *Stone v. Board of Com'rs*, 210 N. C. 226, 186 S. E. 342.

Part 12. Assessment Procedure of Cities and Towns

§ 7971(165). **Status of property and polls listed for taxation.**—All property and polls validly listed for taxation in any county, municipal corporation or taxing district shall be thereby also validly listed for taxation by any county, municipal corporation or taxing district in which it has a taxable situs. Said situs shall be determined by the rules prescribed in this act. (1937, c. 291, s. 1200.)

§ 7971(166). **Tax lists and assessment powers of cities and towns.**—All cities and towns may obtain their tax lists from the county records without securing lists signed by the taxpayers, or may set up their own machinery for securing lists

from the taxpayers, in the discretion of the governing body.

All cities and towns not situated in more than one county shall accept the valuations fixed by the county authorities, as modified by the state board of assessment, under the provisions of this act: Provided, that nothing in this section shall be construed to modify the authority given to cities and towns under this act with respect to discovered property. (1937, c. 291, s. 1201.)

§ 7971(167). **Cities and towns situated in more than one county.**—For the purpose of municipal taxation, all real and personal property and polls subject to taxation by cities and towns situated in two or more counties shall be listed and assessed as hereinafter set forth.

(1) The governing body of each such city or town shall, in quadrennial years, on or before the date fixed for the appointment of the county supervisor, appoint a city supervisor of taxation, and two or more persons to act as list takers and assessors, each of whom, including the supervisor, shall have been resident freeholders in such city or town for a period of not less than twelve months. In years other than quadrennial years such governing body shall, on or before the date fixed for appointment of the county supervisor, appoint one resident freeholder as city supervisor of taxation and, in its discretion, one or more persons to act as list takers and assessors, each of whom shall have been a resident of such city or town for at least twelve months.

(2) With respect to property to be listed for taxation in the city or town the city supervisor shall have the same powers and duties given to the county supervisor under the terms of this act; and the city list takers and assessors shall have the same powers and duties given to county list takers and assessors under the terms of this act; and the procedure of listing and assessing shall be, as nearly as possible, the same as that specified for county listing and assessing under the terms of this act.

(3) The governing body of each such city or town may designate some officer or employee of the city or appoint some other person to supervise the preparation of the tax records and receipts, and to make such reports as the state board of assessment may request or require, and may employ such clerical assistance in this connection as it may deem advisable.

Such governing body shall also be vested with the same powers and duties, with respect to the listing of property for city taxation, as are vested by this act in the county commissioners with respect to the listing of property for county taxation, and shall, with the city supervisor as chairman, sit as a board of equalization and review; and appeals may be taken from said city board of equalization to the state board of assessment in the same manner as provided in this act for appeals from the county boards of equalization.

(4) The intent and purpose of this section is to provide such cities and towns as lie in two or more counties only with the machinery necessary for listing and assessing taxes for municipal purposes. The powers to be exercised by and the duties imposed on such boards of aldermen, boards

of commissioners or other governing bodies, boards of equalization and review, city supervisor of taxation, list takers and assessors, city clerk and taxpayers shall be the same, and they shall be subjected to the same penalties as provided in this act for all boards of county commissioners, county auditors, register of deeds, clerks of boards of county commissioners, county supervisors, list takers and assessors. The county commissioners in their discretion may adopt the tax lists, scroll, or assessment roll of such city or town as fixed and determined by the board of equalization and review of such cities or towns, and when so adopted, shall be considered to all intent and purpose the correct and valid list and the fixed and determined assessment roll for the purpose of county taxation.

(5) All expenses incident to the listing and assessing of the property for the purpose of municipal taxation as aforesaid shall be borne by the city or town for whose benefit the same is undertaken: Provided, that where the county or counties in which such city or town lies shall adopt the list and the fixed, determined assessment of the city board of equalization and review, the county board of commissioners may reimburse the governing body in such amounts as in their discretion may be proper. (1937, c. 291, s. 1202.)

Part 13. Reports to the State Board of Assessment and Local Government Commission

§ 7971(168). Report of valuation and taxes. — The clerk of the board of county commissioners, auditor, tax supervisor, tax clerk, county accountant or other officer performing such duties shall, at such time as the board may prescribe, return to the state board of assessment on forms prescribed by said board an abstract of the real and personal property of the county by townships, showing the number of acres of land and their value, the number of town lots and their value, the value of the several classes of livestock, the number of white and negro polls, separately, and specify every other subject of taxation and the amount of county tax payable on each subject and the amount payable on the whole. At the same time said clerk, auditor, supervisor or other officer shall return to the state board of assessment an abstract or list of the poll, county and school taxes payable in the county, setting forth separately the tax levied on each poll and on each hundred dollars value of real and personal property for each purpose, and also the gross amount of every kind levied for county purposes, and such other and further information as the state board of assessment may require. (1937, c. 291, s. 1300.)

§ 7971(169). Clerks of cities and towns to furnish information. — The clerk or auditor of each city and town in this state shall annually make and transmit to the state board of assessment, on blanks furnished by said board, a full, correct, and accurate statement showing the assessed valuation of all property, tangible and intangible, within his city or town, and separately the amount of all taxes levied therein by said city or town, including school district, highway, street, sidewalk, and other similar improvement taxes for the current year, and the purposes for which the same were levied; and shall annually furnish to the local

government commission a complete and detailed statement of the bonded and other indebtedness of the city or town, the accrued interest on the same, whether not due or due and unpaid, and the purposes for which said indebtedness was incurred. (1937, c. 291, s. 1301.)

§ 7971(170). County indebtedness to be reported. — The auditor or county accountant of each county in this state shall make and deliver annually to the local government commission a full, correct and accurate statement of the bonded and other indebtedness of his county, including township, school districts, and special tax districts, the purposes for which the same was incurred, and all accrued interest, whether not due or due and unpaid. (1937, 291, s. 1302.)

§ 7971(171). Penalty for failure to make report. — Every register of deeds, auditor, county accountant, supervisor of taxation, assessor, sheriff, clerk of superior court, clerk of board of county commissioners, county commissioners, board of aldermen or other governing body of a city or town, mayor, clerk of city or town, or any other public officer, who shall wilfully fail, refuse, or neglect to perform any duty required, to furnish any report to the state board of assessment or local government commission as prescribed in this or the Revenue Act, or who shall wilfully and unlawfully hinder, delay or obstruct said board in the discharge of its duties, shall, for every such failure, neglect, refusal, hindrance or delay, in addition to the other penalties imposed in this and the Revenue Act, pay to the state board of assessment or local government commission for the general fund of the state the sum of one hundred dollars (\$100.00), such sum to be collected by said board of local government commission. A delay of thirty days to make and furnish any report required or to perform a duty imposed shall be prima facie evidence that such delay was wilful. (1937, c. 291, s. 1303.)

Part 14. Levy of Taxes and Penalties for Failure to Pay Taxes

§ 7971(172). Levy of taxes. — The boards of county commissioners of the several counties shall, not later than Wednesday after the third Monday in August, levy such rate of tax for the general county purposes as may be necessary to meet the general expense of the county, not exceeding the legal limitation, and such rates for other purposes as may be authorized by law. (1937, c. 291, s. 1400.)

§ 7971(173). Date as of which lien attaches. — The lien of taxes levied on property and polls listed pursuant to this act shall attach to real estate as of the day as of which property is listed, regardless of the time at which liability for the tax may arise or the exact amount thereof be determined. (1937, c. 291, s. 1401.)

Editor's Note. — A modification of the law to meet an unacceptable interpretation of the former statute is found in this section which fixes a lien as of the date the property is listed. Under the old law no lien attached till July first and a transfer between April first and July first seemed to shed the burden of taxes entirely under the decision of the court in *State v. Champion Fibre Co.*, 204 N. C. 295, 168 S. E. 207. No reason appears why a lien cannot be effective to cover obligations yet to be ascertained and it is

believed the new section cures a glaring defect in our tax law. 15 N. C. Law Rev., No. 4, p. 391.

§ 7971(174). Levy of poll tax.—(1) There shall be levied by the board of county commissioners in each county a tax of two dollars (\$2.00) on each taxable poll or male person between the ages of twenty-one and fifty years, and the taxes levied and collected under this section shall be for the benefit of the public school fund and the poor of the county.

(2) The board of county commissioners of every county shall have the power to exempt any person from the payment of poll taxes on account of indigency, and when any such person has been once exempted he shall not be required to renew his application unless the commissioners shall revoke the exemption. When such exemption shall have been made, the clerk of the board of county commissioners shall furnish the person with a certificate of such exemption, and the person to whom it is issued shall be required to list his poll, but upon exhibition of such certificate the list taker shall annually enter in the column intended for the poll the word "exempt," and the poll shall not be charged in computing the list. (1937, c. 291, s. 1402.)

§ 7971(175). Penalties and discounts for non-payment of taxes.—All taxes assessed or levied by any county in this state, in accordance with the provisions of this act, shall be due and payable on the first Monday of October of the year in which they are so assessed or levied, and if actually paid in cash:

(1) On or before the first day of November next after due and payable, there shall be deducted a discount of one per cent (1%).

(2) After the first day of November and on or before the first day of December next after due and payable, there shall be deducted a discount of one-half of one per cent ($\frac{1}{2}\%$).

(3) After the first day of December and on or before the first day of February next after due and payable, the tax shall be paid at par or face value.

(4) After the first day of February and on or before the first day of March next after due and payable, there shall be added to the tax a penalty of one per cent (1%).

(5) After the first day of March and on or before the first day of April next after due and payable, there shall be added to the tax a penalty of two per cent (2%).

(6) After the first day of April and on or before the first day of May next after due and payable, there shall be added a penalty of three per cent (3%).

(7) After the first day of May and on or before the first day of June next after due and payable, there shall be added a penalty of four per cent (4%).

(8) On and after the second day of June the penalty shall be, in addition to said four per cent (4%), one-half of one per cent ($\frac{1}{2}\%$) per month or fraction thereof until paid from said day on the principal amount of such taxes, which shall continue to accrue on taxes not included in a certificate of sale and which, on taxes included in a certificate of sale, shall continue to accrue until the date of such certificate.

(9) Should any taxpayer desire to make a pre-

payment of his taxes between July first and October first of any year, he may do so by making payment to the county or city accountant, city clerk, auditor or treasurer, as the governing body may determine, and shall be entitled to the following discounts: If paid on or before July first, a deduction of three per cent (3%); if paid on or before August first, a deduction of two and one-half per cent ($2\frac{1}{2}\%$); if paid on or before September first, a deduction of two percent (2%); if paid on or before October first, a deduction of one and one-half per cent ($1\frac{1}{2}\%$). Whenever any such payments are made, the auditor or county accountant shall certify the same to the clerk of the board of county commissioners, and the same shall be credited, together with the discount, to the taxes levied to the person, firm, or corporation, which credit shall include the discount upon the above basis.

(10) The county commissioners of any county may order and direct the payment of taxes in installments of not less than twenty-five per cent of the amount due, at such time as the county commissioners may determine, the final installment to be made payable not later than May first, subject to the discounts and penalties as herein provided: Provided, that no penalties shall be collected in the counties of Mecklenburg and Rowan. (1937, c. 291, s. 1403.)

Editor's Note.—For act relating to prepayment of taxes in Beaufort county, see Public Laws 1937, c. 65.

Part 15. Banks, Trust Companies and Building and Loan Associations

§ 7971(176). Banks, banking associations, and trust companies.—The value of shares of stock of banks, banking associations, and trust companies shall be determined as follows:

(1) Every bank, banking association, industrial bank, savings institution, trust company, or joint-stock land bank located in this state shall list its real estate and tangible personal property, except money on hand, in the county in which such real estate and tangible personal property is located, for the purpose of county and municipal taxation, and shall, during second calendar month following the month in which local tax listing begins each year, list with the state board of assessment, on forms provided by the said state board, in the name of and for its shareholders, all the shares of its capital stock, whether held by residents or non-residents, at its actual value on the day as of which property is assessed under this act.

(2) The actual value of such shares for the purpose of this section shall be ascertained by adding together the capital stock, surplus, and undivided profits, and deducting therefrom the assessed value of such real and tangible personal property which such banking institutions shall have listed for taxation in the county or counties wherein such real and tangible personal property is located, together with an amount according to its proportion of tax value of any buildings and lands wholly or partially occupied by such banking associations, institutions or trust companies, owned and listed for taxation by a North Carolina corporation in which such banking associations or institutions own ninety-nine per cent (99%) of the capital stock.

(3) In addition to the deductions allowed in item two of this section, there may be deducted

from the items of surplus and undivided profits an amount not exceeding five per cent (5%) of the bills and notes receivable of such banking associations, institutions, or trust companies to cover bad or insolvent debts, investments in North Carolina state bonds, United States government bonds, joint-stock land bank bonds, and federal land bank bonds, at the actual cost of said bonds owned on and continuously for at least ninety days prior to the day as of which property is assessed in the current year. The value of such shares of capital stock of such bank associations, institutions, or trust companies shall be found by dividing the net amount ascertained above by the number of shares in the said banking associations, institutions, or trust companies.

(4) If the state board of assessment shall have reason to believe that the actual value of such shares of stock of such banking associations, institutions, or trust companies, as listed with it, is not true value in money, then the said board shall ascertain such true value by such an examination and investigation as seems proper, and increase or reduce the value as so listed to such an amount as it ascertains to be the true value for the purposes of this section.

(5) The value of the capital stock of all such banking associations, institutions, and trust companies as found by the state board of assessment, in the manner herein described, shall be certified to the county and municipality in which such bank or institution is located: Provided, that if any such banking association, institution, or trust company shall have one or more branches, the state board of assessment shall make an allocation of the value of the capital stock so found as between the parent and branch bank or banks or trust company in proportion to the deposits of the parent and branch bank, banks, or trust company, and certify the allocated values so found to the counties and municipalities in which the parent and the branch bank, banks, or trust company are located.

(6) The taxes assessed upon the shares of stock of any such banking association, institutions, or trust companies shall be paid by the cashier, secretary, treasurer, or other officer or officers thereof, and in the same manner and at the same time as other taxes are required to be paid in such counties, and in default thereof such cashier, secretary, treasurer, or other accounting officer, as well as such banking association, institution, or trust company, shall be liable for such taxes, and in addition thereto for a sum equal to ten per cent (10%) thereof. Any taxes so paid upon any such shares may, with the interest thereon, be recovered from the owners thereof by the banking association, institution, or trust company or officers thereof paying them, or may be deducted from the dividends accruing on such shares. The taxation of such shares of capital stock shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this state coming in competition with the business of such banking associations, institutions, or trust companies. (1937, c. 291, s. 1500.)

§ 7971(177). Building and loan associations.—The secretary of each building and loan association organized and/or doing business in this state shall list with the local assessors all the tangible

real and personal property owned on the day as of which property is assessed each year, including all cash on hand or in bank on that date, which shall be assessed and taxed as like property of individuals. (1937, c. 291, s. 1501.)

§ 7971(178). Foreign building and loan associations.—(1) All foreign building and loan associations doing business in this state shall list for taxation, during the second calendar month following the month in which local tax listing begins each year, with the state board of assessment, through their respective agents, its stock held by citizens of this state, with the name of the county, city, or town in which the owners of said stock reside. In listing said stock for taxation the withdrawal value as fixed by the by-laws of each such association shall be furnished to the said board, and the stock shall be valued for taxation at such withdrawal value.

(2) Any association or officer of such association doing business in the state who shall fail, refuse, or neglect to so list shares owned by citizens of this state for taxation shall be barred from doing business in this state; any local officer or other person who shall collect dues, assessments, premiums, fines, or interest from any citizen of this state for any such association which has failed, neglected, or refused to so list for taxation the stock held by citizens of this state shall be guilty of a misdemeanor, and fined and/or imprisoned in the discretion of the court.

(3) The value of the shares of stock so held by citizens of this state, as found by the state board of assessment, shall be certified to the register of deeds of the county in which such shareholders reside, shall be placed on the assessment roll in the name of such holders thereof, and taxed as other property is taxed. (1937, c. 291, s. 1502.)

§ 7971(179). Article not to conflict with § 7880-(156)oo et seq.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], but rather shall they be subordinate thereto. (1937, c. 291, s. 1503.)

§ 7971(180). State board to keep record of all corporations, etc.; secrecy enjoined.—The state board of assessment shall prepare and keep a record book in which it shall enter a correct list of all the corporations, limited partnerships, joint-stock associations, banks, banking associations, industrial banks, savings institutions, and trust companies which it has assessed for taxation, and said record shall show the assessed valuation placed upon them; and the state board of assessment shall not divulge or make public any report of such corporation, partnership, or association required to be made to it, except as provided in this or the Revenue Acts. (1937, c. 291, s. 1504.)

Part 16. Public Service Companies

§ 7971(181). Telegraph companies.—Every joint-stock association, company, co-partnership or corporation, whether incorporated under the laws of this state or any other state or any foreign nation, engaged in transmitting to, from, through, in, or across the state of North Carolina telegraph messages shall be deemed and held to

be a telegraph company; and every such telegraph company shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by oath of the officer or agent of such company making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock of such association, company, co-partnership, or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, co-partnership or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, co-partnership, or corporation situated outside the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina. (1937, c. 291, s. 1600.)

§ 7971(182). **Telephone companies.** — Every telephone company doing business in this state, whether incorporated under the laws of this state or any other state, or of any foreign nation, shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment of this state a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock of such association, company, co-partnership, or corporation invested in the operation of such telephone business.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, co-partnership, or corporation and sub-

ject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, co-partnership, or corporation, situated outside of the state of North Carolina, and used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina. (1937, c. 291, s. 1601.)

§ 7971(183). **Express companies.**—Every joint-stock association, company, co-partnership, or corporation, incorporated or acting under the laws of this state or any other state, or any foreign nation, engaged in carrying to, from, through, in or across this state, or any part thereof, money, packages, gold, silver, plate, merchandise, freight or other articles, under any contract, expressed or implied, with any railroad company or the managers, lessees, agents or receivers thereof, provided such joint-stock association, company, co-partnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this act; and every such express company shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such association, company, co-partnership or corporation making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock or capital of said association, co-partnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share; and in case no shares of capital stock are issued, in what manner the capital stock thereof is divided, and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by the said association, company, co-partnership or corporation, and subject to local taxation within the state of North Carolina, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with

the improvements thereon, owned by the association, company, co-partnership or corporation situated outside the state of North Carolina, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines or routes over which such association, company, co-partnership or corporation transports such merchandise, freight, or express matter; (b) the total length of such lines or routes as are outside the state of North Carolina; (c) the length of such lines or routes within each of the counties and townships within the state of North Carolina. (1937, c. 291, s. 1602.)

§ 7971(184). Sleeping-car companies.—Every joint-stock association, company, co-partnership or corporation incorporated or acting under the laws of this or any other state, or of any foreign nation, and conveying to, from, through, in or across this state, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars, or chair cars, under any contract, expressed or implied, with any railroad company or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping-car company for the purposes of this act, and shall hereinafter be called "sleeping-car company"; and every such sleeping-car company doing business in this state shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock of such sleeping-car company invested in its sleeping-car business.

Second. The number of shares of such capital stock devoted to the sleeping-car business issued and outstanding, and the par or face value of each share.

Third. Under the laws of what state it is incorporated.

Fourth. Its principal place of business.

Fifth. The names and postoffice address of its president and secretary.

Sixth. The actual cash value of the shares of such capital stock devoted to its sleeping-car business on the day as of which property is assessed next preceding such report.

Seventh. The real estate, structures, machinery, fixtures, and appliances owned by said sleeping-car company and subject to local taxation within this state, and the location and assessed value thereof in each county within this state where the same is assessed for local taxation.

Eighth. All mortgages upon the whole or any part of its property, and the amounts thereof, devoted to its sleeping-car business.

Ninth. (a) The total length of the main line of railroad over which cars are run; (b) the total length of so much of the main lines of railroad over which the said cars are run outside of the

state of North Carolina; (c) the length of the lines of railroads over which said cars are run within the state of North Carolina: Provided, that where the railroads over which said cars run have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but single tracks; and in case it shall be required, such statement shall show in detail the number of miles of each or any particular railroad or system within the state. When the assessment shall have been made by the state board of assessment in accordance with section 7971(189), the board shall thereupon notify the officer attesting such report of the amount assessed against it, and such sleeping-car company shall have twenty days within which to appear and make objection, if any it shall have, to said assessment. If no objection be made within twenty days, the state board of assessment shall certify to the county commissioners of the several counties through which such cars are used the value of the property of such sleeping-car company within such county in the proportion that the number of miles of railroad over which such cars are used in said county bears to the number of miles of railroad over which such cars are used within the state, together with the name and post-office address of the officers attesting such report of such sleeping-car company, with the information that tax bills, when assessed, are to be sent to him by mail; and such value, so certified, shall be assessed and taxed the same as other property within said county. And when the assessment shall have been made in such county, the sheriff or county tax collector shall send to the address given by the state board of assessment to the county commissioners a bill for the total amount of all taxes due to such county, and such sleeping-car company shall have sixty days thereafter within which to pay said taxes; and upon failure of and refusal to do so such taxes shall be collected the same as other delinquent taxes are, together with a penalty of fifty per cent (50%) added thereto, and costs of collection. (1937, c. 291, s. 1603.)

§ 7971(185). Refrigerator and freight-car companies.—Every person, firm, or corporation owning refrigerator or freight cars operated over or leased to any railroad company in this state or operating in the state shall be taxed in the same manner as hereinbefore provided for the tax of sleeping-car companies, and the collection of the tax hereon shall be followed in assessing and collecting the tax on the refrigerator and freight cars taxed under this section: Provided, if it appears that the owner does not lease the cars to any railroad company, or make any contract to furnish it with cars, but they are furnished to be run indiscriminately over any lines on which shipper or railroad companies may desire to send them, and the owner receives compensation from each road over which the cars run, the state board of assessment shall ascertain and assess the value of the average number of cars which are in use within the state as a part of the necessary equipment of any railroad company for the year ending with the day as of which property is assessed, next preceding the report, and the tax shall be computed upon this assessment. (1937, c. 291, s. 1604.)

§ 7971(186). Street railway, waterworks, electric light and power, gas, ferry, bridge, and other public utility companies.—Every street railway company, waterworks company, electric light and power company, gas company, ferry company, bridge company, canal company, and other corporations exercising the right of eminent domain, shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the co-partnership or corporation, showing:

First. The total capital stock of such association, company, co-partnership, or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, co-partnership or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, co-partnership, or corporation situate outside of the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situate.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of lines within each of the counties and townships within the state of North Carolina. (1937, c. 291, s. 1605.)

§ 7971(187). State board of assessment may require additional information.—Upon the filing of the statements required in the preceding sections the state board of assessment shall examine them and each of them; and if the board shall deem the same insufficient, or in case it shall deem that other information is requisite, it shall require such officer to make such other and further statements as said board may call for. In case of the failure or refusal of any association, company, co-partnership, or corporation to make out and deliver to the state board of assessment any statement or statements required by this act, such association, company, co-partnership, or corporation shall forfeit and pay to the state of North Carolina one hundred dollars (\$100.00) for each additional day such report is delayed beyond the last day of the month in which required to be made, to be sued for and recovered in any proper form of action in the name of the state of North Carolina on the relation of the state board of assessment, and such penalty, when collected, shall be

paid into the general fund of the state. (1937, c. 291, s. 1606.)

§ 7971(188). State board of assessment shall examine statements.—The state board of assessment shall thereupon value and assess the property of each association, company, co-partnership, or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom and upon such other information as the board may have or obtain. For that purpose it may require the agents or officers of said association, company, co-partnership, or corporation to appear before it with such books, papers, and statements as it may require, or may require additional statements to be made, and may compel the attendance of witnesses in case the board shall deem it necessary to enable it to ascertain the true cash value of such property. (1937, c. 291, s. 1607.)

§ 7971(189). Manner of assessment. — Said state board of assessment shall first ascertain the true cash value of the entire property owned by the said association, company, co-partnership, or corporation from said statement or otherwise for the purpose, taking the aggregate value of all the shares of capital stock, in case shares have a market value, and in case they have none, taking the actual value thereof or of the capital of said association, company, co-partnership, or corporation in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, co-partnership, or corporation shall be encumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock or to the value of the capital in case there should be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, co-partnership, or corporation. Such state board of assessment shall, for the purpose of ascertaining the true cash value of property within the state of North Carolina, next ascertain from such statements or otherwise the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated within the state of North Carolina and not specifically used in the general business of such associations, companies, co-partnerships or corporations, which assessed value for taxation shall be by said board deducted from the gross value of the property as above ascertained. Said state board of assessment shall next ascertain and assess the true cash value of the property of the associations, companies, co-partnerships, or corporations within the state of North Carolina by taking as a guide, as far as practicable, the proportion of the whole aggregate value of said associations, companies, co-partnerships as above ascertained, after deducting the assessed value of such real estate without the state which the length of lines of said associations, companies, co-partnerships or corporations, in the case of telegraph and telephone companies, within the state of North Carolina bears to the total length thereof, and in the case of express companies and sleeping-

car companies the proportion shall be in proportion of the whole aggregate value, after such deduction, which the length of lines or routes within the state of North Carolina bears to the whole length of lines or routes of such associations, companies, co-partnerships or corporations, and such amounts so ascertained shall be deemed and held as the entire value of the property of said associations, companies, co-partnerships or corporations within the state of North Carolina: Provided, the board shall, in valuing the fixed property in this state, give due consideration to the amount of gross and net earnings per mile of line in this state, and any other factor which would give a greater or less value per mile in this state than the average value for the entire system. From the entire value of the property within the state so ascertained there shall be deducted by the state board of assessment the assessed value for taxation of all real estate, structures, machinery, and appliances within the state and subject to local taxation in the counties, as hereinbefore described in sections 7971(183)-7971(188), inclusive, and the residue of such value as ascertained, after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said associations: Provided, the state board of assessment shall also assess the value for taxation of all structures, machinery, appliances, pole lines, wire and conduit of telephone and telegraph companies within the state subject to local taxation, but land and buildings located thereon owned by said companies shall be assessed in like manner and by the same officials as though such property was owned by individuals in this state. (1937, c. 291, s. 1608.)

§ 7971(190). Value per mile.—Said state board of assessment shall thereupon ascertain the value per mile of the property within the state by dividing the total value as above ascertained, after deducting the specific properties locally assessed within the state by the number of miles within the state, and the result shall be deemed and held as value per mile of the property of such association, company, co-partnership, or corporation within the state of North Carolina: Provided, the value per mile of telephone companies shall be determined on a wire mileage basis. (1937, c. 291, s. 1609.)

§ 7971(191). Total value for each county.—Said state board of assessment shall thereupon, for the purpose of determining what amount shall be assessed by it to said association, company, co-partnership, or corporation in each county in the state through, across, and into or over which the lines of said association, company, co-partnership or corporation extends, multiply the value per mile, as above ascertained, by the number of miles in each of such counties as reported in said statements or as otherwise ascertained, and the result thereof shall be by the clerk of said board certified to the chairman of the board of county commissioners, respectively, of the several counties through, into, over, or across which the lines or routes of said association, company, co-partnership, or corporation extend: Provided, the total value of street railways, electric light, power and gas companies, as determined in section 7971(189) to be certified to each county, shall be the

proportion which the assessed value of the physical property in each county bears to the total assessed value of the physical property in the state. All taxes due the state from any corporation taxed under the preceding sections shall be paid by the treasurer of each company direct to the commissioner of revenue. (1937, c. 291, s. 1610.)

§ 7971(192). Companies failing to pay tax.—In case any such association, company, co-partnership, or corporation as named in this act shall fail or refuse to pay any taxes assessed against it in any county in this state, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state of North Carolina by the solicitors of the different judicial districts of the state on the relation of the board of commissioners of the different counties of this state, and the judgment in said action shall include a penalty of fifty per cent (50%) of the amount of taxes as assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over, or across which the lines or routes of any association, company, co-partnership, or corporation shall extend, or in any county where such association, company, co-partnership, or corporation shall have an office or agent for the transaction of business. In case such association, company, co-partnership, or corporation shall have refused to pay the whole of the taxes assessed against the same by the state board of assessment, or in case such association, company, co-partnership, or corporation shall have refused to pay the taxes or any portion thereof assessed to it in any particular county or counties, such action may include the whole or any portion of the taxes so unpaid in any county or counties; but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions to each separate county or adjoining counties, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits shall be by said board accounted for as a credit to the respective counties for or on account of which such collections were made by the said board at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the state, and upon such settlement being made the treasurers of the several counties shall, at their next settlement, enter credits upon the proper duplicates in their offices, and at the next settlement with such county, report the amount so received by him in his settlement with the state, and proper entries shall be made with reference thereto: Provided, that in any such action the amount of the assessments fixed by said state board of assessment and apportioned to such county shall not be controverted. (1937, c. 291, s. 1611.)

§ 7971(193). State board made appraisers for public utilities.—The state board of assessment herein established is constituted a board of appraisers and assessors for railroad, canal, steamboat, hydro-electric, street railway, and all other companies exercising the right of eminent domain. (1937, c. 291, s. 1612.)

§ 7971(194). Returns to state board by railroad, etc., companies.—The president, secretary, super-

intendent, or other principal accounting officer within this state of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this state or not, shall, during the second calendar month following the month in which local tax listing begins each year, return to the said board of assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within the state, viz: The number of miles of such railroad lines in each county in this state, and the total number of miles in the state, including the roadbed, right-of-way and superstructures thereon, main and side tracks, depot buildings and depot grounds, section and tool houses and the land upon which they are situated and necessary to their use, water stations and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad, or used in the daily operation, whether situated on the charter right-of-way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the state board of assessment, Pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: Provided, however, that all machines and repair shops, general office buildings, storehouses and contents thereof, located outside of the right-of-way shall be listed for purposes of taxation by the principal officers or agents of such companies with the list takers of the county where the real and personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the state board of assessment. It shall be the duty of the register of deeds, if requested so to do by the state board of assessment, to certify and send to the said board a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the board in accordance with section 7971(196), before the apportionment is made to the counties and municipalities. The register of deeds shall also certify to the board the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the performance of the duties of their offices as the said board shall require of them; and the mayor of each city or town shall cause to be sent to the said board the local rate of taxation for municipal purposes. (1937, c. 291, s. 1613.)

§ 7971(195). Railroads; annual schedule of rolling stock, etc., to be furnished to state board.—The movable property belonging to a railroad company shall be denominated, for the purpose of taxation, "rolling stock." Every person, company, or corporation owning, constructing, or operating a railroad in this state shall, during the second calendar month following the month in which local tax listing begins each year, return a list or schedule to the state board of assessment which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of lo-

comotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand-cars, and all other kinds of cars, and the value thereof, and a statement or schedule as follows: (1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the amount of capital stock paid up; (3) the market value, or, if no market value, then the actual value of shares of stock; (4) the length of line operated in each county and total in the state; (5) the total assessed value of all tangible property in the state; (6) and, if desired, all the information heretofore required to be annually reported by section seven thousand nine hundred and sixty-four of the Consolidated Statutes. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the board, and with reference to amounts and value on the day as of which property is assessed for the year for which the return is made. (1937, c. 291, s. 1614.)

§ 7971(196). Railroads; tangible and intangible property assessed separately.—(a) At such dates as real estate is required to be assessed for taxation the said board of assessment shall first determine the value of the tangible property of each division or branch of such railroad or rolling stock and all the other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as is in the case of private property.

(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted) as evidenced by the market value of all capital stock certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

(c) The aggregate value of the physical or tangible property, and the franchise, as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in such county bears to the entire length of each division or branch thereof, and the state board of assessment shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amounts apportioned to his county, city or town. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township or special taxing districts. (1937, c. 291, s. 1615.)

§ 7971(197). Railroads; where road both within and without state.—When any railroad has part of its road in this state and part thereof in any other state, the said board shall ascertain the value of railroad track, rolling stock, and all other property

liable to assessment by the state board of assessment of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this state bears to the whole length of such main line of road and determine the value in this state accordingly: Provided, the board shall, in valuing the fixed property in this state, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in the month following the month in which said reports are required to be made, the said board shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said board may, if they see fit, require all argument and communications to be presented in writing. (1937, c. 291, s. 1616.)

§ 7971(198). Railroads; in cases of leased roads.—If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner hereinbefore directed; and if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this state other than that which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company. (1937, c. 291, s. 1617.)

§ 7971(199). Railroads; board may subpoena witnesses and compel production of records.—The state board of assessment shall have power to summon and examine witnesses and require that books and papers shall be presented to them for the purpose of obtaining such information as may be necessary to aid in determining the valuation of any railroad company. Any president, secretary, receiver, or accounting officer, servant or agent of any railroad or steamboat company having any proportion of its property or roadway in this state who shall refuse to attend before the said board when required to do so, or refuse to submit to the inspection of said board any books or papers of such railroad company in his possession, custody, or control, or shall refuse to answer such questions as may be put to him by said board, or order touching the business or property, moneys and credits, and the value thereof, of said railroad company, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be confined in the jail of the county not exceeding thirty days, shall be fined in any sum not exceeding five hundred dollars (\$500.00) and costs, and any president, secretary, accounting officer, servant, or agent aforesaid so refusing as aforesaid shall be deemed guilty of contempt of such board, and may be confined, by order of said board, in the jail of the proper county until he shall comply with such order and pay the cost of his imprisonment. (1937, c. 291, s. 1618.)

§ 7971(200). Taxes on railroads shall be a lien

on property of the same.—The taxes upon any and all railroads in this state, including roadbed, right-of-way, depots, side tracks, ties, and rails, now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon, commencing from the day as of which property is assessed in each current year, against all claims or demands whatsoever of all persons or bodies corporate except the United States and this state, and the above described property or any part thereof may be taken and held for payment of all taxes assessed against said railroad company in the several counties of this state. (1937, c. 291, s. 1619.)

§ 7971(201). Board of assessment to certify apportionment of valuations to counties and municipalities; payment of local taxes.—The state board of assessment shall, upon completion of the assessment directed in the preceding sections, certify to the register of deeds of the counties and the clerk of the board of commissioners of the municipalities through which said companies operate the apportionment of the valuations as hereinbefore determined and apportioned by the board, and the board of county commissioners shall assess against such valuation the same tax imposed for county, township, town, or other tax district purposes, as that levied on all other property in such county, township, town, or other taxing districts. This tax shall be paid to the sheriff or tax collector of the county and municipality. (1937, c. 291, s. 1620.)

§ 7971(202). Canal and steamship companies.—The property of all canal and steamboat companies in this state shall be assessed for taxation as above provided for railroads. In case any officer fails to return the property provided in this section, the board shall ascertain the length of such property in this state, and shall assess the same in proportion to the length at the highest rate at which property of that kind is assessed by them. (1937, c. 291, s. 1621.)

Part 17. General Provisions

§ 7971(203). Foreign corporations not exempt.—Nothing in this act shall be construed to exempt from taxation at the value prescribed by law any property situated in this state belonging to any foreign corporation, unless the context clearly indicates the intent to grant such exemption. (1937, c. 291, s. 1700.)

§ 7971(204). Unconstitutionality or invalidity.—If any clause, sentence, paragraph, sub-section, section, or any part of this act shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, sub-section, section or part thereof directly involved in such judgment. No caption of any section or sections shall in any way affect the validity of this act or any part thereof. (1937, c. 291, s. 1701.)

§ 7971(205). General purpose of act.—It is the purpose of this act to provide the machinery for the listing and valuing of property, and the levy and collection of taxes, for the year one thousand nine hundred and thirty-seven, and annually

thereafter, and to that end this act shall be liberally construed, subject to the provisions set out in Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.]. (1937, c. 291, s. 1702.)

§ 7971(206). Inconsistent acts repealed.—Chapter four hundred and seventeen, Public Laws of one thousand nine hundred and thirty-five, and chapter one hundred and eight, Public Laws of one thousand nine hundred and twenty-five, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed: Provided, that this shall not affect the validity of any tax levied under the terms of any such act or acts; nor shall it affect the validity of any action taken under the provisions of such acts prior to the ratification of this act: Provided further, that none of the provisions contained in any of the sections or articles of this act shall be construed to conflict with or to repeal any part of Article VIII, Schedule H, of the Revenue Act [§ 7880(156)oo et seq.], but rather shall they be subordinate thereto. (1937, c. 291, s. 1703.)

§ 7971(207). Effective date.—This act shall be in full force and effect from and after its ratification. Ratified this the 22nd day of March, A. D. 1937. (1937, c. 291, s. 1704.)

Part 18. Validation of Listings

§ 7971(208). Real property listings validated.—Listings of any real estate not otherwise listed, which have been carried forward on the tax list of any person by the county supervisor of taxation, list taker or assessor, at the same assessed value of said property as it was valued at in the last quadrennial assessment of taxes, unless the value thereof has been changed by the board of county commissioners as provided by law, are hereby validated, and are hereby declared to be legal and valid listings of the same as if listed by the owner or owner's agent or by the chairman of the board of county commissioners or otherwise, as provided by law.

This section shall be retroactive so as to include the period of time from the first day of May, one thousand nine hundred twenty-seven, to and including the eleventh day of May, one thousand nine hundred thirty-five.

The counties of Alamance, Ashe, Beaufort, Bertie, Brunswick, Cabarrus, Camden, Carteret, Clay, Currituck, Dare, Durham, Greene, Halifax, Harnett, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Macon, Moore, Northampton, Pasquotank, Pitt, Polk, Randolph, Richmond, Robeson, Rowan, Rutherford, Sampson, Surry, Transylvania, Wake, Warren, and Wayne are hereby exempted from the provisions of this section. (1937, c. 259, ss. 1-3.)

SUBCHAPTER III. COLLECTION OF TAXES

Art. 10. General Provisions

§ 7976(b). Taxing authorities authorized to release or remit taxes.—The board of county commissioners or city council or board of aldermen or city commissioners, or any other governing body in any city or town, shall have power to release, discharge, remit or commute any portion of the taxes assessed and levied against any person or property within their respective jurisdictions

when there has been destruction or partial destruction or any damage to the property assessed for valuation when such destruction, partial destruction or damage occurs between midnight of April first and midnight of June thirtieth of any year, and when said destruction or partial destruction or damage has been caused by tornado, cyclone, hurricane or other wind or windstorm: Provided, application for release, discharge, remission or commutation is made to the aforesaid governing body within one year of the date of said destruction, partial destruction or damage: Provided further, that in cases of applicants for such relief who have received, or may receive, reimbursements for such damage or destruction from insurance policy contracts or otherwise, or whose property has been restored or rehabilitated, wholly or partially, by the Red Cross or any public welfare agency or organization without full value having been paid therefor by the property owner, such applicant shall, as a condition precedent to the relief herein provided for, list for taxation for the year for which relief is asked the equivalent in value of such reimbursement or restoration or rehabilitation; and Provided further, that such governing body shall apply this section uniformly to all persons and property within its jurisdiction. This section shall be retroactive to and including April first, one thousand nine hundred and thirty-six. (1937, c. 15, ss. 1, 2.)

§ 7979. Remedy of taxpayer for unauthorized tax.

Exclusiveness of Statutory Remedy.—

Quo warranto is the sole remedy to test the validity of an election to public office, but not to test the validity of a tax even though it is levied under the authority of a popular election. *Barbee v. Board of Com'rs*, 210 N. C. 717, 188 S. E. 314. See § 858 and the note thereto.

Art. 11. Rights of Parties Adjusted

§ 7982. Forfeiture by life tenant failing to pay.

Taxes Constitute Claim against Life Tenant's Estate.—A life tenant is liable for taxes assessed against the property during his lifetime, and when he dies without paying the same they constitute a claim against his estate for taxes assessed previous to his death within the meaning of § 93, and are payable in the third class stipulated by that section. *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

Purpose of Section.—The fact that the remainderman is given the right of forfeiture and redemption upon this section in case the life tenant suffer the land to be sold for taxes, is in recognition of the duty resting upon the life tenant to keep the property free from tax liens, so that it may pass to the remainderman unencumbered by such liens. *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

Art. 12. Tax Liens

§ 7986. No lien on personalty.

Lien Attaches at Levy.—

Since a lien for personal property taxes does not attach until levy thereon, where the receiver of a corporation sold personal property of the corporation under orders of the court, and the city and county levied executions on the funds derived from the sale, claiming preferred claims for personal property taxes for several years prior to the appointment of the receiver, it was held that no lien for taxes was created prior to the sale of the property free from tax liens by the receiver, and that the city and county have no lien on the proceeds of sale of the property and are not entitled to a preferred claim against the funds. *Currie v. Southern Manufacturers Club*, 210 N. C. 150, 185 S. E. 666.

§ 7987. Lien on realty.

As to date lien attaches under Machinery Act of 1937, see § 7971(173).

Editor's Note.—As to amendatory act applicable only to Durham county, see Public Laws 1937, c. 211.

Superior to Street Assessment Lien.—The lien for street assessment under § 2713 is superior to all other liens except the annual general property tax under this section. *Winston-Salem v. Powell Paving Co.*, 7 F. Supp. 424, 427.

Nature of the Lien.—

Persons who hold liens of any character against real estate hold them subject to a lien of the city and county for the ad valorem taxes. *Winston-Salem v. Powell Paving Co.*, 7 F. Supp. 424, 427.

§ 7987(a). Interested party paying taxes after sale, subrogated to rights of governmental agency as to other tracts.

Cited in *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

§ 7987(b). Interested party may redeem part of land.

Editor's Note.—Public Laws 1937, c. 81, applicable only to Mecklenburg county, struck out the proviso of this section.

Art. 13. Time and Manner of Collection

§ 8003. Property in hands of receiver.

Failure to Levy Prior to Sale Gives Purchaser Title Clear of Liens.—Where neither the city nor the county levied upon property for unpaid taxes after the same came into the possession of a receiver, when the property was sold, under the orders of the court, the purchaser acquired title to same free and clear of any lien for the taxes due by the defendant at the date of the appointment of the receiver. *Currie v. Southern Manufacturers Club*, 210 N. C. 150, 152, 185 S. E. 666.

Art. 14. Tax Sales

Part 1. Sale of Personalty

§ 8009. Fees of sheriff and expenses of sale of personalty and realty.

Sheriff Paid Fixed Salary Not Entitled to Fees.—Plaintiff sheriff was paid a fixed salary for his services as a tax collector under the provisions of ch. 329, Public Laws of 1925, hence his services in advertising and selling land for delinquent taxes, and preparing land-sale certificates, and entering land sales upon the land-sale register, were performed in pursuit of his duties as tax collector, and the sheriff is not entitled to receive, in addition to his salary, fees for such services under this section. *Patterson v. Swain County*, 208 N. C. 453, 181 S. E. 329.

Stated, in dissenting opinion, in *Braswell v. Richmond County*, 208 N. C. 649, 182 S. E. 148.

Part 2. Sale of Realty

§ 8012(d). Notices of sale for taxes by publication validated.—All sales of real property under tax certificate foreclosures, made since January first, one thousand nine hundred twenty-seven, where the original notice of sale was published for four successive weeks, and any notice of resale was published for two successive weeks, preceding said sales, whether the notice of sale was required to be published in a newspaper or at courthouse door, or both, shall be, and the same are in all respects validated as to publication of said notice: Provided, nothing in this validating section shall affect pending litigation: Provided further, said publication was completed as above set out within ten days of the date of the sale.

The provisions of this section shall not apply to the counties of Alleghany, Beaufort, Cabarrus, Camden, Carteret, Caswell, Currituck, Halifax, Harnett, Henderson, Hertford, Hyde, Iredell, Johnston, Jones, Macon, Mitchell, Moore, Nash, New Hanover, Perquimans, Pitt, Polk, Rowan, Rutherford, Scotland, Surry, Wake, Warren, Washington, and Wayne. (1937, c. 128, ss. 1, 2.)

§ 8014. Sale advertised.

Editor's Note.—Public Laws 1937, c. 142, provides that the provisions of Public Laws 1931, c. 126, shall not apply to Yancey county. All advertisements of tax sales in Yan-

cey county shall be published in a newspaper published in said county.

§ 8026. Certificate to county, city, etc.; right to transfer.

Quoted, in dissenting opinion, in *Braswell v. Richmond County*, 208 N. C. 649, 182 S. E. 148.

Part 3. Tax Deeds

§ 8028. Remedy of holder of certificates of sale.

This section changed the law as to tax deeds, and substituted the remedy by suit for foreclosure of the certificate of tax sale. *Bailey v. Howell*, 209 N. C. 712, 714, 184 S. E. 476.

Certificate Can Not Be Proved as Preferred Claim against Life Tenant's Estate.—A tax-sale certificate in the hands of a remainderman, representing taxes paid by the remainderman during the lifetime of the life tenant, may not be proved as a preferred claim against the estate of the life tenant, since the remainderman's sole remedy upon the tax-sale certificate is by foreclosure under this section. *Rigsbee v. Brogden*, 209 N. C. 510, 184 S. E. 24.

Part 4. Remedies of Purchasers at Tax Sales

§ 8037. Purchaser shall foreclose.

Editor's Note.—For act relating to Beaufort county and the municipalities therein, see Public Laws 1937, c. 65.

Same—Limit on Attorney's Fees and Total Cost—Interest and Penalty.—Public Laws 1933, c. 560, provides that in no event shall the attorney fee exceed two dollars and fifty cents in each suit for foreclosure; that the total cost of the taxpayer including attorney's fee shall not exceed six dollars in each suit; and that the interest and penalty on tax sale certificates shall be eight per centum per annum.

Last and Highest Bidder Has No Rights in Property Until Bid Is Accepted.—Where, in a proceeding to foreclose a tax sale certificate, the land has been sold but before confirmation of the bid a resale is ordered and pending a resale the taxpayer pays the judgment for the taxes and the county takes a voluntary nonsuit, the last and highest bidder at the sale is not entitled to be made a party to the action and contest the validity of the judgment as of nonsuit, the order of resale being a rejection of his bid and a release of his liability thereunder, and the fact that he had placed the last and highest bid at the sale conferring no rights in the property to him. *Richmond County v. Simmons*, 209 N. C. 250, 183 S. E. 282.

This section provides for a check on the office of the sheriff, and requires him to make delivery of certificates of sales evidencing purchases by counties to some properly designated officer. While it is clearly pointed out that it is the duty of such officer to collect the taxes due on these certificates of sales evidencing purchases by the counties, it is nowhere said that the actual collection shall not be made by the sheriff or the tax collector. *Braswell v. Richmond County*, 208 N. C. 649, 652, 182 S. E. 148, dissenting opinion of Justice Clarkson.

Part 5. Redemption from Tax Sales

§ 8038. Manner of redemption.

Quoted, in dissenting opinion, in *Braswell v. Richmond County*, 208 N. C. 649, 182 S. E. 148.

CHAPTER 131A

UNEMPLOYMENT COMPENSATION

§ 8052(1). Title.—This chapter shall be known and may be cited as the "Unemployment Compensation Law." (Ex. Sess., 1936, c. 1, s. 1.)

For article discussing unemployment compensation, see 15 N. C. Law Rev., No. 4, p. 377.

§ 8052(2). Declaration of state public policy.—As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which re-

quires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. (Ex. Sess., 1936, c. 1, s. 2.)

§ 8052(3). Benefits.—(a) Payment of Benefits.—Twenty-four months after the date when contributions first accrue under this chapter benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

(b) Weekly Benefit Amount for Total Unemployment.—Each eligible individual who is totally unemployed (as defined in section 8052(19) (k) (1)) in any week shall be paid, with respect to such week, benefits at the rate of fifty per centum of his full-time weekly wage (as defined in subsection (d) of this section), but not more than fifteen dollars per week nor less than either five dollars or three-fourths of his full-time weekly wage, whichever is the lesser.

(c) Weekly Benefit for Partial Unemployment.—Each eligible individual who is partially unemployed (as defined in section 8052(19) (k) (2)) in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount equal to the difference between his weekly benefit amount (as defined in section 8052(19) (q)) and five-sixths of his remuneration (as defined in section 8052(19) (n)) for such week.

(d) Determination of Full-Time Weekly Wage.—(1) The full-time weekly wage of any individual means the weekly wages that such individual would receive if he were employed at the most recent wage rate earned by him in his base period and for the customary scheduled full-time week prevailing for his occupation in the enterprise in which he last earned wages during his base period.

(2) If the commission finds that the full-time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual, the full-time weekly wage of such individual shall be deemed to be one-thirteenth of his total wages in that quarter in which such total wages were highest during his base period.

(e) Duration of Benefits.—The maximum total amount of benefit payable to any eligible individual during any benefit year shall not exceed the balance credited to his account with respect to wages earned during his base period or sixteen times his weekly benefit amount, whichever is the

lesser. The commission shall maintain a separate account for each individual who earns wages subsequent to December thirty-one, one thousand nine hundred and thirty-six, except where the commission may find other forms of reports adequate. After the expiration of each calendar quarter, the commission shall credit each such account with one-sixth of the wages earned by such individual during such quarter, or sixty-five dollars, whichever is the lesser. Benefits paid to an eligible individual shall be charged against amounts credited to his account on the basis of wages earned during his base period, which have not previously been charged hereunder, in the same chronological order as the wages on the basis of which such amounts were computed were earned. (Ex. Sess., 1936, c. 1, s. 3; 1937, c. 448, s. 1.)

Editor's Note.—The 1937 amendment inserted at the end of the second sentence of subsection (e) the words "except where the commission may find other forms of reports adequate."

§ 8052(4). Benefit eligibility conditions.—An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of section 8052(6) (a);

(c) He is able to work, and is available for work;

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of two weeks (and for the purposes of this subsection two weeks of partial unemployment shall be deemed to be equivalent to one week of total unemployment). Such weeks of total or partial unemployment or both need not be consecutive. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections (b) and (c) of this section;

(3) Unless it occurs within the thirteen consecutive weeks preceding the week for which he claims benefits: Provided, that this condition shall not interrupt the payment of benefits for consecutive weeks of unemployment nor require any individual who, prior to the first day of his benefit year, shall have accumulated such two waiting period weeks, to accumulate more than three additional waiting period weeks during his ensuing benefit year;

(4) Unless it occurs after benefits first could become payable to any individual under this chapter;

(e) He has within the first four out of the last five completed calendar quarters immediately preceding the first day of his benefit year, earned wages of not less than sixteen times his weekly benefit amount. (Ex Sess., 1936, c. 1, s. 4.)

§ 8052(5). Disqualification for benefits.—An individual shall be disqualified for benefits:

(a) For the week in which he has left work voluntarily without good cause, if so found by the commission, and for not less than the one nor more than the five weeks which immediately follow such week (in addition to the waiting period), as determined by the commission, according to the circumstances in each case.

(b) For the week in which he has been discharged for misconduct connected with his work, if so found by the commission, and for not less than the one nor more than the nine weeks which immediately follow such week (in addition to the waiting period), as determined by the commission according to the circumstances in each case. Such period shall be charged against the employer's individual account as if benefits had been paid hereunder.

(c) If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred, and for not less than the one nor more than the five weeks which immediately follow such week (in addition to the waiting period), as determined by the commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: Provided, that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute:

Provided, for the purposes of this subsection (d), that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment, or other premises.

(e) For any week with respect to which he is receiving or has received remuneration in the form of—

(1) Remuneration in lieu of notice;

(2) Compensation for temporary partial disability under the Workmen's Compensation Law of any state or under a similar law of the United States; or

(3) Old age benefits under Title II of the Social Security Act, as amended, or similar payments under any act of congress: Provided, that if such remuneration is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

(f) (1) If the commission finds he is customarily self-employed and can reasonably return to self-employment.

(2) If unemployment is due to a fire, where found by the commission to constitute a catastrophe, a flood, a cyclone, a tornado, or other catastrophe, or act or civil or military authority directly affecting the place of employment.

(3) If unemployment is caused by commitment to a penal institution. (Ex. Sess. 1936, c. 1, s. 5; 1937, c. 448, ss. 2, 3.)

Editor's Note.—The 1937 amendment inserted the second sentence in subsection (b), and added subsection (e).

§ 8052(6). Claims for benefits.—(a) Filing.—Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service, and shall make available to each such individual, at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

(b) Initial Determination.—A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the commission, which shall make its determinations with respect thereto in accordance with the procedure described in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 8052(5) (d), the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection. The dep-

uty shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final, and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the commission shall be paid only after such determination: Provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals.—Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such decision further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal Tribunals.—To hear and decide disputed claims, the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than five dollars per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Commission Review.—The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the commission may deem expedient. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the commission shall be heard by a quorum thereof in accordance with the requirements in sub-section (c) of this

section. The commission shall promptly notify the interested parties of its findings and decision.

(f) Procedure.—The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the commission for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees.—Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this chapter.

(h) Appeal to Courts.—Any decision of the commission, in the absence of an appeal therefrom as herein provided, shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission as provided by this chapter. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who has been designated by it for that purpose.

(i) Appeal Proceedings. — The decision of the commission shall be final, subject to appeal as herein provided. Within ten days after the decision of the commission has become final, any party aggrieved thereby may appeal to the superior court of the county of his residence. In case of such appeal, the court shall have power to make party-defendant any other party which it may deem necessary or proper to a just and fair determination of the case. In every case in which appeal is demanded, the appealing party shall file a statement with the commission within the time allowed for appeal, in which shall be plainly stated the grounds upon which a review is sought and the particulars in which it is claimed the commission is in error with respect to its decision. The commission shall make a return to the notice of appeal, which shall consist of all documents and papers necessary to an understanding of the appeal, and a transcript of all testimony taken in the matter, together with its findings of fact and decision thereon, which shall be certified and filed with the superior court to which appeal is taken within thirty days of said notice of appeal. The commission may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section the findings of the commission as to the facts, if there is evidence to support it, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner, and shall be given precedence over all civil cases, except cases arising under the Workmen's Compensation Law of this state. An appeal may be taken from the de-

cision of the superior court, as provided in civil cases. No bond shall be required upon such appeal. Upon the final determination of the case or proceeding the commission shall enter an order in accordance with such determination. Such an appeal shall not act as a supersedeas or stay of any judgment, order, or decision of the court below, or of the commission unless the commission or the court shall so order as to the decision rendered by it. (Ex. Sess. 1936, c. 1, s. 6; 1937, cc. 150, 448, s. 4.)

Editor's Note.—The first 1937 amendment omitted the requirement that attorneys representing the commission as mentioned in subsection (h) be regular employees of the commission. The second 1937 amendment inserted the words beginning "or may provide" at the end of the first sentence of subsection (e).

§ 8052(7). Contributions.—(a) **Payment.**—(1) On and after January one, one thousand nine hundred and thirty-six, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter, with respect to wages payable for employment (as defined in section 8052(19) (g)) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulation as the commission may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(b) **Rate of Contribution.**—Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) Nine-tenths of one per centum with respect to employment during the calendar year one thousand nine hundred and thirty-six;

(2) One and eight-tenths per centum with respect to employment during the calendar year one thousand nine hundred and thirty-seven;

(3) Two and seven-tenths per centum with respect to employment during the calendar year one thousand nine hundred and thirty-eight, and each year thereafter.

(c) **Future Rates Based on Benefit Experience.**—(1) The commission shall maintain a separate account for each employer, and shall credit his account with all the contributions which he has paid on his own behalf. But nothing in this chapter shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund, either on his own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged against the account of his most recent employers hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred, but the maximum amount so charged against the account of any employer shall not exceed one-sixth of the wages payable to such individual by each such employer for employment which occurs on and after the first day of such individual's base period, or sixty-five dollars per completed calendar quarter or portion thereof, whichever is the lesser.

The commission shall by general rules prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment during the same week.

(2) The commission may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(3) **Commission to Make Study and Report as to Amendment Providing Rates Based on Benefit Experience.**—As soon as possible after the effective date of this chapter the commission shall begin a study of the subject of unemployment compensation in relation to the advisability of amending the law so as to provide for the setting up and operation of a merit rating system and/or a reserve account system, and of such other amendments and improvements as experience may suggest. To this end they shall keep such accounts and records, and demand and receive such reports from employing units as in their opinion may be deemed necessary for the purpose, may hold hearings, subpoena witnesses and cause them to attend, compel production of books and documents, and shall exercise such other powers as may be deemed necessary in connection with the said study; and they shall, within thirty days of the convening of the legislature of one thousand nine hundred and thirty-nine, report their findings and conclusions in such detail as they may deem necessary to the governor of the state, who shall make the same available to the members of the legislature. (Ex. Sess. 1936, c. 1, s. 7.)

§ 8052(8). Period, election, and termination of employer's coverage.—(a) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, if it files with the commission, prior to the fifth day of January of such year, a written application for termination of coverage, and the commission finds that there were no twenty different days, each day being in a different week within the preceding calendar year, within which such employing unit employed eight or more individuals in employment subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 8052(19) (f) shall be treated as a single employing unit.

(c) (1) An employing unit, not otherwise subject to this chapter, which files with the commission its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of Janu-

any one of any calendar year subsequent to such two calendar years only if, at least thirty days prior to such first day of January, it has filed with the commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the commission a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commission such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, at least thirty days prior to such first day of January, such employing unit has filed with the commission a written notice to that effect. (Ex. Sess. 1936, c. 1, s. 8.)

§ 8052(9). Unemployment compensation fund.

—(a) Establishment and Control.—There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this chapter. This fund shall consist of (1) all contributions collected under this chapter, together with any interest thereon collected pursuant to section 8052(14); (2) all fines and penalties collected pursuant to the provisions of this chapter; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

(b) Accounts and Deposit.—The state treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the commission and in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 8052(14) may be paid from the clearing account upon warrants issued upon the treasurer by the state auditor under the requisition of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section nine hundred and four of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the un-

employment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond, conditioned upon the faithful performance of those duties as custodian of the fund, in an amount fixed by the commission and in a form prescribed by law or approved by the attorney-general. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals. — Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon by the state auditor requisitioned by the commission for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the budget bureau or any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall bear the signature of the state auditor, as requisitioned by a member of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be re-deposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund.—The provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist, and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and

release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or such investments as are now permitted by law for sinking funds of the state of North Carolina; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commission. (Ex. Sess. 1936, c. 1, s. 9.)

§ 8052(10). Unemployment compensation commission.—(a) Organization.—There is hereby created a commission to be known as the unemployment compensation commission of North Carolina. The commission shall consist of three members, two of whom shall be appointed by the governor within thirty days after the passage of this chapter. In case of any vacancy occurring in the membership of such commission as to the two members thereof appointed by the governor, such vacancy shall be filled by appointment by the governor. The commissioner of labor shall be ex officio the third member of the unemployment compensation commission with the same powers and duties as other members of the commission. The governor shall have the power to designate the member of said commission who shall act as the chairman thereof. The person designated as chairman shall act as chairman for such time as shall be determined by the governor. During the term of membership on the commission of any member so appointed by the governor, such member shall not engage in any other business, vocation, or employment, or serve as an officer or a committee member of any political party organization. One of the members appointed by the governor shall be appointed to serve for a term of two years after his appointment. The person appointed to succeed such member whose term expires as aforesaid shall be appointed to serve for a term of six years thereafter. One of the members of said commission to be appointed by the governor shall serve for a term of six years after his appointment. The person appointed by the governor to succeed such member shall be appointed for a term of six years. Any member appointed to fill a vacancy occurring in the appointments made by the governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The governor may at any time, after notice and hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(d) Divisions.—The commission shall establish two co-ordinate divisions: the North Carolina state employment service division, created pursuant to section 8052(12), and the unemployment compensation division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and

duties, except in so far as the commission may find that such separation is impracticable.

(c) Salaries.—Each commissioner appointed by the governor shall be paid from the unemployment compensation administration fund a salary payable on a monthly basis, which salary shall be fixed by the governor, with the approval of the council of state. The compensation of the commissioner of labor as the third member of the said commission, ex officio, shall be the same as now fixed by law and paid as now prescribed by law.

(d) Quorum. — Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission. (Ex. Sess. 1936, c. 1, s. 10.)

§ 8052(11). Administration. — (a) Duties and Powers of Commission.—It shall be the duty of the commission to administer this chapter; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. Not later than the first day of February of each year, the commission shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year, and shall make such recommendations for amendments to this chapter as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules.—General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given by mail to last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the

commission and shall become effective in the manner and at the time prescribed by the commission.

(c) Publication.—The commission shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations and general rules, its annual reports to the governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor.

(d) Personnel.—Subject to other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. It shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments, not to exceed six months in duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such examinations. All positions shall be filled by persons selected and appointed on a non-partisan merit basis. The commission shall not employ or pay any person who is an officer or committee member of any political party organization. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may, in its discretion, bond any person handling moneys or signing checks hereunder.

(e) Advisory Councils.—The commission shall appoint a state advisory council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this chapter, and in assuring impartiality and freedom from political influence in the solution of such problems. Such local advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses. The state advisory council shall be paid ten dollars per day per each member attending actual sitting of such council, and mileage and subsistence as allowed to state officials.

(f) Employment Stabilization. — The commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(g) Records and Reports. — Each employing unit shall keep true and accurate employment records, containing such information as the commis-

sion may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both.

(h) Oaths and Witnesses.—In the discharge of the duties imposed by this chapter, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

(i) Subpoenas.—In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the commission, or its duly authorized representative, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the commission, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(j) Protection against Self-Incrimination.—No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission or in obedience to the subpoena of the commission or any member thereof, or any duly authorized representative of the commission, in any cause or proceeding before the commission, on the ground that the testimony or evidence, doc-

umentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(k) State-Federal Co-Operation.—In the administration of this chapter, the commission shall co-operate, to the fullest extent consistent with the provisions of this chapter, with the social security board, created by the Social Security Act, approved August fourteenth, one thousand nine hundred and thirty-five, as amended; shall make such reports, in such form and containing such information as the social security board may from time to time require, and shall comply with such provisions as the social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in the administration of this chapter.

Upon request therefor, the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits, and such recipient's rights to further benefits under this chapter.

(l) Reciprocal Benefit Arrangements. — The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund. (Ex. Sess. 1936, c. 1, s. 11.)

§ 8052(12). **Employment service.** — (a) State Employment Service. — The state employment service created by chapter one hundred and six, Public Laws of one thousand nine hundred and thirty-five, and acts amended thereby [§ 7312(a) et seq.], is hereby transferred to the commission as a division thereof, which shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter, and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes," approved June sixth, one thousand nine hundred and thirty-three (48 Stat., 113; U. S. C., Title 29, sec. 49 (c)), as amended. The said division shall be administered by a full-

time salaried director, who shall be charged with the duty to co-operate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section four of said act, and this state will observe and comply with the requirements thereof. The state employment service division is hereby designated and constituted the agency of this state for the purpose of said act. The commission is directed to appoint the director, other officers, and employees of the state employment service. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service.

(b) Financing. — All moneys received by this state under the said act of congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the state employment service to be expended as provided by this section and by said act of congress. For the purpose of establishing and maintaining free public employment offices, said division is authorized to enter into agreements with any political subdivision of this state or with any private, non-profit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account. (Ex. Sess. 1936, c. 1, s. 12.)

§ 8052(13). **Unemployment compensation administration fund.**—(a) Special Fund.—There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. The unemployment compensation administration fund, except as otherwise provided in this chapter, shall be subject to the provisions of the Executive Budget Act, chapter one hundred, Public Laws one thousand nine hundred and twenty-nine [§ 7486 (gg1) et seq.], the provisions of the Personnel Act, chapter two hundred and seventy-seven, Public Laws one thousand nine hundred and thirty-one, and chapter forty-six, Public Laws of one thousand nine hundred and thirty-three [§§ 7521(k)-7521(y)], which are re-enacted in the first paragraph of section seventeen of chapter three hundred and six, Public Laws one thousand nine hundred and thirty-five. Any provisions herein made shall be subject to the provisions of the act of congress entitled "An act to provide for the establishment of a national employment system, and for the co-operation with the states in the promotion of such system, and for other purposes," approved June sixth, one thousand nine hundred and thirty-three (48 Stat., 113; U. S. C., Title 29, sec. 49 (c)), as amended, as the same may affect the state employment service and the employment service account hereinafter referred to. All moneys in this fund shall be expended solely for the

purpose of defraying the cost of the administration of this chapter, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security board and the United States employment service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond, conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund, in an amount to be fixed by the commission and in a form prescribed by law or approved by the attorney-general. The premiums for such bond, and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 8052(9), shall be paid from the moneys in the unemployment compensation administration fund.

(b) **Employment Service Account.**—A special "employment service account" shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to section 8052(12), and for the purpose of co-operating with the United States employment service. There is hereby appropriated out of the appropriation made by chapter one hundred and six of the Public Laws of one thousand nine hundred and thirty-five [§ 7312(a) et seq.], after the provision for liquidation of all outstanding obligations of the state employment service, all of the unexpended portion of said appropriations for the fiscal year beginning July first, one thousand nine hundred and thirty-six, and ending June thirtieth, one thousand nine hundred and thirty-seven, to the commission created by this chapter, for the purpose of paying the state's contribution towards the expenses of the administration of the state employment service created by the provisions of chapter one hundred and six, Public Laws one thousand nine hundred and thirty-five [§ 7312(a) et seq.], and transferred under the provisions of this chapter as a division to be set up by said commission. And for the said purpose, there is hereby appropriated annually to the said commission the sum of seventy-five thousand dollars. In addition, there shall be paid into such account the moneys designated in section 8052(12) (b), and such moneys as are apportioned for the purpose of this account from any moneys received, or which may be received by this state under Title III of the Social Security Act, as amended. (Ex. Sess. 1936, c. 1, s. 13.)

§ 8052(14). Collection of contributions. — (a) **Interest on Past-Due Contributions.**—Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of one per centum per month from and after such date until payment

plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

(b) **Collection.**—If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the Workmen's Compensation Law of this state; or if any contribution imposed by this chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within thirty days after the same become due and payable, the commission under the hand of its chairman, may certify the same in duplicate and forward one copy thereof to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies for each county in which the commission has reason to believe such delinquent has property located, which copy so forwarded to the clerk of the superior court shall be immediately docketed by said clerk and indexed on the cross-index of judgment, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The duplicate of said certificate shall be forwarded by the commission to the sheriff or sheriffs of such county, or counties, and in the hands of such sheriff shall have all the force and effect of an execution issued to him by the clerk of the superior court upon the judgment of the superior court duly docketed in said county. A return of such execution shall be made to the commission together with all moneys collected thereunder.

(c) **Priorities under Legal Dissolution or Distributions.**—In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of one thousand eight hundred and ninety-eight, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section sixty-four (b) of that act (U. S. C., Title II, sec. 104 (b), as amended).

(d) **Refunds.**—If not later than one year after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make

application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commission shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commission's own initiative. (Ex. Sess. 1936, c. 1, s. 14.)

§ 8052(15). Protection of rights and benefits.—

(a) Waiver of Rights Void.—Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of individuals in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

(b) Limitation of Fees.—No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel; but no such counsel shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not more than six months, or both.

(c) No Assignment or Benefits; Exemptions.—Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void. (Ex. Sess. 1936, c. 1, s. 15; 1937, c. 150.)

Editor's Note.—Prior to the 1937 amendment the individual mentioned in subsection (b) could be represented by a duly authorized agent as well as by counsel.

§ 8052(16). Penalties.—(a) Whoever makes a

false statement or representation, knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or for any other person, shall be punished by a fine of not less than twenty dollars nor more than fifty dollars, or by imprisonment for not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal, shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the non-disclosure or misrepresentation by him or by another of a material fact (irrespective of whether such non-disclosure or misrepresentation was known or fraudulent), has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this chapter, or shall be liable to repay to the commission for the unemployment compensation fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in section 8052(14) (b) for the collection of past-due contributions. (Ex. Sess. 1936, c. 1, s. 16.)

§ 8052(17). Representation in court. —(a) In any civil action to enforce the provisions of this chapter, the commission and the state may be represented by any qualified attorney who is designated by it for this purpose.

(b) All criminal actions for violation of any provision of this chapter, or of any rules or regu-

lations issued pursuant thereto, shall be prosecuted as now provided by law by the solicitor or by the prosecuting attorney of any county or city in which the violation occurs. (Ex. Sess. 1936, c. 1, s. 17; 1937, c. 150.)

Editor's Note.—The 1937 amendment omitted the requirement that the attorney be a regular salaried employee of the commission.

§ 8052(18). Non-liability of state.—Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums. (Ex. Sess. 1936, c. 1, s. 18.)

§ 8052(19). Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(a) (1) "Annual pay roll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual pay roll" means the average of the annual pay rolls of any employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(c) "Commission" means the unemployment compensation commission established by this chapter.

(d) "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

(e) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has, on or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection (f) of this section, or section 8052(8) (c), the employing unit shall, for all the purposes of this chapter, be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment, except that each such contractor or subcontractor who is an employer by reason of subsection (f) of this section or section 8052(8) (c) shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to

individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection (f) of this section or section 8052(8) (c), may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work.

(f) "Employer" means (1) Any employing unit which in each of twenty different weeks within either the current or the preceding calendar year (whether or not such weeks are or were consecutive) has, or had in employment, eight or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week);

(2) Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(3) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise), directly or indirectly by the same interest, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3), or (4), has not, under section 8052(8), ceased to be an employer subject to this chapter; or

(6) For the effective period of its election pursuant to section 8052(8) (c) any other employing unit which has elected to become fully subject to this chapter.

(g) (1) "Employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Services performed within this state but not covered under paragraph (2) of this subsection

tion shall be deemed to be employment subject to this chapter, if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such service is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(5) Service shall be deemed to be localized within a state if

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(7) The term "employment" shall not include:

(A) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(B) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States;

(C) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: Provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 8052(11) (b) for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of

congress, acquired rights to benefits under this chapter;

(D) Agricultural labor;

(E) Domestic service in a private home;

(F) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(G) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(H) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(h) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(i) "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(j) "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(k) "Total and partial unemployment."

(1) An individual shall be deemed "totally unemployed" in any week with respect to which no remuneration is payable to him and during which he performs no services (other than odd jobs or subsidiary work for which no remuneration, as used in this subsection, is payable to him).

(2) An individual shall be deemed "partially unemployed" in any week of less than full-time work if his remuneration payable for such week is less than six-fifths of the weekly benefit amount he would be entitled to receive if totally unemployed and eligible.

(3) As used in this sub-section, the term "remuneration" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of \$3.00 in any one week.

(4) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(l) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(m) "Wages" means all remuneration payable by employers for employment.

(n) "Remuneration" means all compensation payable for personal services including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as remuneration payable by his employing unit. The reasonable cash value of compensation payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and de-

terminated in accordance with rules prescribed by the commission.

(o) "Week" means such period or periods of seven consecutive calendar days ending at midnight as the commission may by regulations prescribe.

(p) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the commission may by regulation prescribe.

(q) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment.

(r) "Benefit year," with respect to any individual, means the fifty-two consecutive week period beginning with the first day of the first week with respect to which benefits are first payable to him and thereafter, the fifty-two consecutive week period beginning with the first day of the first week with respect to which benefits are next payable to him after the termination of his last preceding benefit year.

(s) The term "base period" means the first eight of the last nine completed calendar quarters immediately preceding the first day of an individual's benefit year: Provided, that with respect to any benefit year which begins prior to April first, one thousand nine hundred and thirty-nine, "base period" shall mean those calendar quarters beginning January first, one thousand nine hundred and thirty-seven, and ending with the last day of the next to the last completed calendar quarter immediately preceding any week with respect to which benefits are payable. (Ex. Sess. 1936, c. 1, s. 19; 1937, c. 448, s. 5.)

§ 8052(20). Enforcement of unemployment compensation law discontinued upon repeal or invalidation of federal acts.—It is the purpose of this chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five, as to credit on payment of federal taxes, of state contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the state that this chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States supreme court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States supreme court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder.

All federal grants and all contributions theretofore collected, and all funds in the treasury by

virtue of this chapter, shall, nevertheless, be disbursed and expended, as far as may be possible, under the terms of this chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the state unemployment commission shall be reduced as rapidly as possible.

The funds remaining available for use by the North Carolina unemployment commission shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid, and the payment of the necessary costs for the further administration of this chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the state employment service, created by chapter one hundred six, Public Laws of one thousand nine hundred thirty-five [§ 7312(a) et seq.], and transferred by chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session [§ 8052(12)], and made a part of the unemployment compensation commission of North Carolina, shall in such event return to and have the same status as it had prior to enactment of chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session, and under authority of chapter one hundred six, Public Laws of one thousand nine hundred thirty-five, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the unemployment compensation commission of North Carolina, the said state employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this chapter or the provisions of chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session. (1937, c. 363.)

CHAPTER 133

WEIGHTS AND MEASURES

Art. 1. Establishment and Use of Standards

§ 8060. Standard weights and measures, exception; penalty.—The standard weight of the following seeds and other articles named shall be as stated in this section, viz:

Alfalfa shall be 60 lbs. per bu.; apples, dried, shall be 24 lbs. per bu.; apples seed shall be 40 lbs. per bu.; barley shall be 48 lbs. per bu.; beans, castor, shall be 46 lbs. per bu.; beans, dry, shall be 60 lbs. per bu.; beans, green in pod, shall be 30 lbs. per bu.; beans, soy, shall be 60 lbs. per bu.; beef, net, shall be 200 lbs. per bbl.; beets shall be 50 lbs. per bu.; blackberries shall be 48 lbs. per bu.; blackberries, dried, shall be 28 lbs. per bu.; bran shall be 20 lbs. per bu.; broomcorn shall be 44 lbs. per bu.; buckwheat shall be 50 lbs. per bu.; cabbage shall be 50 lbs. per bu.; canary seed shall be 60 lbs. per bu.; carrots shall be 50 lbs. per bu.; cherries, with stems, shall be 56 lbs. per bu.; cherries, without stems, shall be 64 lbs. per bu.; clover seed, red and white, shall

be 60 lbs. per bu.; clover, burr, shall be 8 lbs. per bu.; clover, German, shall be 60 lbs. per bu.; clover, Japan, Lespedeza, shall be, in hull 25 lbs. per bu.; corn, shelled, shall be 56 lbs. per bu.; corn, Kaffir, shall be 50 lbs. per bu.; corn, pop, shall be 70 lbs. per bu.; cotton seed shall be 30 lbs. per bu.; cotton seed, Sea Island, shall be 44 lbs. per bu.; cucumbers shall be 48 lbs. per bu.; fish shall be, half-barrel 100 lbs. per ½ bbl.; flax seed shall be 56 lbs. per bu.; grapes, with stems, shall be 48 lbs. per bu.; grapes, without stems, shall be 60 lbs. per bu.; gooseberries shall be 48 lbs. per bu.; grass seed, Bermuda, shall be 14 lbs. per bu.; grass seed, blue, shall be 14 lbs. per bu.; grass seed, Hungarian, shall be 48 lbs. per bu.; grass seed, Johnson, shall be 25 lbs. per bu.; grass seed, Italian rye, shall be 20 lbs. per bu.; grass seed orchard, shall be 14 lbs. per bu.; grass seed, tall meadow and tall fescue 24 lbs. per bu.; grass seed, all meadow and fescue except tall 14 lbs. per bu.; grass seed, perennial rye, shall be 14 lbs. per bu.; grass seed, timothy, shall be 45 lbs. per bu.; grass seed, velvet, shall be 7 lbs. per bu.; grass, red top, shall be 14 lbs. per bu.; hemp seed shall be 44 lbs. per bu.; hominy shall be 62 lbs. per bu.; horseradish shall be 50 lbs. per bu.; liquids shall be 42 gals. per bbl.; meal, corn, whether bolted or unbolted 48 lbs. per bu.; melon, cantaloupe, shall be 50 lbs. per bu.; millet shall be 50 lbs. per bu.; mustard shall be 58 lbs. per bu.; nuts, chestnuts, shall be 50 lbs. per bu.; nuts, hickory, without hulls, shall be 50 lbs. per bu.; nuts, walnuts without hulls, shall be 50 lbs. per bu.; oats, seed, shall be 32 lbs. per bu.; onions, button sets, shall be 32 lbs.; onions, top buttons, shall be 28 lbs. per bu.; onions, matured, shall be 57 lbs. per bu.; osage orange seed shall be 33 lbs. per bu.; peaches, matured, shall be 50 lbs. per bu.; peaches, dried, shall be 25 lbs. per bu.; peanuts shall be 22 lbs. per bu.; peach seed shall be 50 lbs. per bu.; peanuts, Spanish, shall be 30 lbs. per bu.; parsnips, shall be 50 lbs. per bu.; pears, matured, shall be 56 lbs. per bu.; pears, dried, shall be 26 lbs. per bu.; peas, dry, shall be 60 lbs. per bu.; peas, green, shall be, in hull 30 lbs. per bu.; pieplant shall be 50 lbs. per bu.; plums shall be 64 lbs. per bu.; pork, net, shall be 200 lbs. per bbl.; potatoes, Irish, shall be 56 lbs. per bu.; potatoes, sweet, green, shall be 56 lbs. per bu.; and the dry weight 47 lbs. per bu.; quinces, matured, shall be 48 lbs. per bu.; raspberries shall be 48 lbs. per bu.; rice, rough, shall be 44 lbs. per bu.; rye seed shall be 56 lbs. per bu.; sage shall be 4 lbs. per bu.; salads, mustard, spinach, turnips, kale 10 lbs. per bu.; salt shall be 50 lbs. per bu.; sorghum seed shall be 50 lbs. per bu.; sorghum molasses shall be 12 lbs. per gal.; strawberries shall be 48 lbs. per bu.; sunflower seed shall be 24 lbs. per bu.; teosinte shall be 59 lbs. per bu.; tomatoes shall be 56 lbs. per bu.; turnips shall be 50 lbs. per bu.; wheat shall be 60 lbs. per bu.; cement shall be 80 lbs. per bu.; charcoal shall be 22 lbs. per bu.; coal, stone, shall be 80 lbs. per bu.; coke shall be 40 lbs. per bu.; hair, plastering, shall be 8 lbs. per bu.; land plaster shall be 100 lbs. per bu.; lime, unslaked, shall be 80 lbs. per bu.; lime, slaked, shall be 40 lbs. per bu.

It shall be unlawful to purchase or sell, or barter or exchange, any article named in this section on any other basis than as stated herein: Provided,

however, that any and/or all such articles may be sold by weight, avoirdupois standard.

If any person shall take any greater weight than is specified for any of the items named herein, he shall forfeit and pay the sum of twenty dollars for each separate case to any person who may sue for same. (1915, c. 230, s. 1; 1909, c. 555, s. 1; 1917, c. 34; Ex. Sess. 1921, c. 87; 1931, c. 76; 1937, c. 354.)

Editor's Note.—The 1937 amendment struck out the clauses relating to the weight of corn in ear, and substituted "gallon" for "bushel" in the clause relating to the weight of sorghum molasses. It also substituted the next to the last paragraph for the one formerly appearing in this section.

CHAPTER 133A

WORKMEN'S COMPENSATION ACT

Art. 1. General Provisions

§ 8081(h). Official title.

In General.—It was the purpose of the General Assembly in providing for compensation for an employee, that the North Carolina Industrial Commission, created by the act for that purpose, shall administer its provisions to the end that both employee and employer shall receive the benefits and enjoy the protection of the act. The act contemplates mutual concessions by employee and employer; for that reason, its validity has been upheld, and its policy approved. Winslow v. Carolina Conference Ass'n, 211 N. C. 571, 578, 191 S. E. 403.

Construction.—

In accord with original. See *Roberts v. City Ice, etc., Co.*, 210 N. C. 17, 185 S. E. 438.

The Industrial Commission has exclusive jurisdiction of the rights and remedies herein afforded. *Hedgepeth v. Lumbermen's Mut. Cas. Co.*, 209 N. C. 45, 47, 182 S. E. 704.

Proceeding Should Not Be in Name of Deceased Employee.—A proceeding under the Workmen's Compensation Act to determine liability of defendants to the next of kin of a deceased employee should not be brought in the name of the deceased employee. *Slade v. Willis Hosiery Mills*, 209 N. C. 823, 184 S. E. 844.

§ 8081(i). Definitions.

A compensable death is one which results from an injury by accident arising out of and in the course of the employment. There must be an accident followed by an injury by such accident which results in harm to the employee before it is compensable under our statute. *Slade v. Willis Hosiery Mills*, 209 N. C. 823, 825, 184 S. E. 844.

Where there is any competent evidence in support of the finding of the Industrial Commission that the accident in question arose out of and in the course of the employment, the finding is conclusive on the courts upon appeal. *Latham v. Southern Fish, etc., Co.*, 208 N. C. 505, 181 S. E. 640.

"Accident" as has been defined "as an unlooked for and untoward event which is not expected or designed by the person who suffers the injury." *Slade v. Willis Hosiery Mills*, 209 N. C. 823, 825, 184 S. E. 844, citing *Conrad v. Cook-Lewis Foundry Co.*, 198 N. C. 723, 153 S. E. 266; *McNeely v. Carolina Asbestos Co.*, 206 N. C. 568, 174 S. E. 509.

Death from injury by accident implies a result produced by a fortuitous cause. *Slade v. Willis Hosiery Mills*, 209 N. C. 823, 825, 184 S. E. 844.

Employee Contracting Pneumonia. — Where an employee got wet in washing certain machines, although furnished with special clothes, and while removing ashes, was in the sunshine and open air, and the sudden change in temperature caused him to contract pneumonia, from which he died, the evidence does not disclose any accidental injury. *Slade v. Willis Hosiery Mills*, 209 N. C. 823, 184 S. E. 844.

Injury from Occupational Disease. — Where claimant worked in an asbestos plant for six or seven years, and a dust removing system was not installed until about a year before claimant's discharge when a medical examination disclosed that he was suffering from asbestosis, the evidence shows the injury was the result of an occupational disease not compensable under the Workmen's Compensation Act prior to its amendment by ch. 123, Public Laws of 1935. *Swink v. Carolina Asbestos Co.*, 210 N. C. 303, 186 S. E. 258.

Executive Performing Manual Labor. — Where evidence showed claimant went to another city to inspect a job which defendant employer was completing, and did manual

labor on the job in installing radiators, and was injured in an automobile accident occurring while he was returning home from the job, the claimant, at the time of his accidental injury, had not been off on a mission of a purely executive nature, but at the time was doing the work of an ordinary laborer or employee. *Rowe v. Rowe-Coward Co.*, 208 N. C. 484, 181 S. E. 254.

Employee Injured in Alighting from Moving Truck.—Where employer hired two employees to ride on truck to help the driver unload and, on the last trip, the driver consented to let the employees off at the place on his route nearest their homes, and one of the employees attempted to alight before the truck had completely stopped, contrary to express orders, and fell to his mortal injury, the evidence was sufficient to sustain the finding that the accident arose out of and in the course of the employment. *Latham v. Southern Fish, etc., Co.*, 208 N. C. 505, 181 S. E. 640.

Injury to Deputized Policeman Aiding in Arrest.—Evidence that claimant was injured while attempting to aid a policeman in serving a warrant for breach of the peace, and that claimant had been duly deputized by the policeman to aid in making the arrest, is held sufficient to support the finding of the Industrial Commission that at the time of injury claimant was an employee of defendant town under a valid appointment. *Tomlinson v. Norwood*, 208 N. C. 716, 182 S. E. 659.

§ 8081(k). Presumption that all employers and employees have come under provisions of chapter.

Notwithstanding the presumption contained in this section, there are provisions in the act whereby employers, as well as employees, may except themselves from the operation thereof (see §§ 8081(l), 8081(v), 8081(x), and the presumption of acceptance may be rebutted by the proof of nonacceptance. *Calahan v. Roberts*, 208 N. C. 768, 182 S. E. 657.

Plaintiff and his employer were bound by the provisions of the Workmen's Compensation Act. Plaintiff's injury occurred while he was allowed by his employer to use certain machinery for his own personal ends. Compensation was denied since the accident did not arise out of and in the course of the employment. Thereafter plaintiff sued alleging negligence on the part of the employer. But it was held that conceding the evidence established negligence of defendant employer, the Compensation Act barred all other rights and remedies of defendant employee except those provided in the act. *Francis v. Carolina Wood Turning Co.*, 208 N. C. 517, 181 S. E. 628.

§ 8081(l). Notice of non-acceptance and waiver of exemption.

Cited in *Calahan v. Roberts*, 208 N. C. 768, 182 S. E. 657.

§ 8081(r). Other rights and remedies excluded; right to sue tort feasers; minor illegally employed; subrogation; amount of compensation as evidence; compromise.

The meaning of this section is both clear and logical, namely, that if after the expiration of six months from the date of the injury or death, the employer has not commenced an action, the employee, or his personal representative, shall thereafter have the right to bring an action in his own name, and that any amount recovered shall be paid in the same manner as if the employer had brought the action. *Ikerd v. North Carolina R. Co.*, 209 N. C. 270, 272, 183 S. E. 402.

Words "and the employer" in First Paragraph Are Surplusage.—The words "and the employer," appearing near the end of the first paragraph, have no proper grammatical place in the sentence, and render the whole sentence ambiguous and doubtful. So we are impelled to hold, in construing the sentence, that these words are surplusage, and as such must be disregarded. *Ikerd v. North Carolina R. Co.*, 209 N. C. 270, 272, 183 S. E. 402.

Joinder of Insurance Carrier Properly Denied.—More than six months after the injury complained of, the original defendants filed a petition and moved that the employer's insurance carrier also be made a party defendant, the motion was denied, and defendants appealed. The motion for joinder of the insurance carrier was properly denied under the provisions of this section, the statute giving the right to an employee to maintain an action against a third person tort-feasor if the employer fails to institute such action within six months from date of the injury. *Peterson v. McManus*, 208 N. C. 802, 182 S. E. 483.

Intent of Section.—After filing proceedings for compensa-

tion claimant filed a counterclaim in a suit at law instituted against him by a third person, which suit involved the same accident resulting in the injuries for which he sought compensation. Claimant was not barred by filing the counterclaim from thereafter prosecuting his claim before the Industrial Commission, since he recovered no judgment, and the intent of this section, being that an injured employee should be compensated either by an award or by the "procurement of a judgment in an action at law," the rights of the parties being determined by the act prior to its amendment. *Rowe v. Rowe-Coward Co.*, 208 N. C. 484, 181 S. E. 254.

Employer Is Not Relieved of Liability by Insurer's Insolvency after Recovery against Third Person.—An administratrix was only a nominal party to a suit against a third person tort-feasor and had no control over the recovery and could not safeguard it for the purpose of paying the award, and the employer, who selected the insurance carrier for his own protection, is not relieved of his primary obligation to the dependents of the employee by reason of the insurer's recovery from the third person and default in payment because of insolvency, nor does the fact that the employer had no notice of the suit, by the insurer against the third person alter this result. *Roberts v. City Ice, etc., Co.*, 210 N. C. 17, 185 S. E. 438.

Quoted in Winslow v. Carolina Conference Ass'n, 211 N. C. 571, 191 S. E. 403.

Cited in Francis v. Carolina Wood Turning Co., 208 N. C. 517, 181 S. E. 628.

§ 8081(v). Employers not bound by article may not use certain defenses in damage suit.

Cited in *Calahan v. Roberts*, 208 N. C. 768, 182 S. E. 657.

§ 8081(x). Defenses denied to non-adhering employer against non-adhering employee.

Cited in *Calahan v. Roberts*, 208 N. C. 768, 182 S. E. 657.

§ 8081(cc). Claims unassignable and exempt from taxes and debts; agreement of employee to contribute to premium or waive right to compensation; unlawful deduction by employer.

See the note in 15 N. C. Law Rev., No. 3, p. 286.

§ 8081(dd). Written notice of accident to employer.

Where the employer has filed a report with the Commission within the prescribed time upon verbal information elicited from the representative of the employee by its claim agent, the representative being unable to read or write, and, the employer admitting liability, the report has been filed with the Industrial Commission as a claim within one year from date of the accident and contains all facts necessary to make an award. *Hanks v. Southern Public Utilities Co.*, 210 N. C. 312, 186 S. E. 252.

Applied in *Lilly v. Belk Bros.*, 210 N. C. 735, 188 S. E. 319.

§ 8081(ee). What notice is to contain; defects no bar; notice personally or by registered letter.

Applied in *Lilly v. Belk Bros.*, 210 N. C. 735, 188 S. E. 319.

§ 8081(ff). Right to compensation barred after one year.

The provisions of this section constitute a condition precedent to the right to compensation, and not a statute of limitation. For this reason, where a claim for compensation under the provisions of the North Carolina Workmen's Act has not been filed with the Industrial Commission within one year after the date of the accident which resulted in the injury for which compensation is claimed, or where the Industrial Commission has not acquired jurisdiction of such claim within one year after the date of such accident, the right to compensation is barred. *Winslow v. Carolina Conference Ass'n*, 211 N. C. 571, 582, 191 S. E. 403.

Report Filed on Verbal Information Is Proper.—Where an employer files a report with the Commission within the prescribed time upon verbal information given by the representative of the employee, the representative not being able to read or write, and the employer admits liability, the report has been properly filed with the Industrial Commission as a claim and it acquires jurisdiction. *Hanks v. Southern Public Utilities Co.*, 210 N. C. 312, 186 S. E. 252.

Prosecuting Common Law Action and Failing to File Application for Hearing Is Not Abandonment of Filed Claim.—The prosecution of a suit at common law and the failure

to file application for a hearing when requested did not amount to an abandonment of the claim for compensation filed by the employer, and no final award having been made at the time of the filing of formal petition for an award, the matter was pending at that time before the Commission, and it was error to deny compensation on the ground that claimant was barred by failure to file claim within one year after the death of the deceased employee. *Hanks v. Southern Public Utilities Co.*, 210 N. C. 312, 186 S. E. 252, wherein the court inadvertently cited § 8081(bb).

Claim Not Filed within Time Prescribed.—Where an employee did not file a claim until more than twelve months after injury, and the employer did not file a report of the accident because it did not have knowledge thereof, although it delivered claimant's wages to him after the disability resulting from the injury, but thought the disability was due to a prior injury, had no knowledge of the subsequent injury, and made no representations that the wages delivered to the claimant were in lieu of compensation, the evidence supports the findings that the claim was not filed within the time prescribed by this section. *Lilly v. Belk Bros.*, 210 N. C. 735, 188 S. E. 319.

§ 8081(gg). Medical treatment and supplies.

Insurer's Obligation to Furnish Medical Attention.—An employee brought action against the insurance carrier and its agent, alleging that after his injury the agent, on behalf of insurer, induced him to dispense with the services of his physician and consult physicians selected by insurer, and that insurer promised to provide hospitalization and surgical service recommended by insurer's physicians, but failed to do so to plaintiff's permanent injury. It was held that insurer's obligation to furnish medical attention necessary to plaintiff's complete recovery was founded on this section, and the Industrial Commission has exclusive jurisdiction of plaintiff's claim. *Hedgepeth v. Lumbermen's Mut. Cas. Co.*, 209 N. C. 45, 182 S. E. 704.

§ 8081(II). Partial incapacity; prorating where total disability results in partial.

The employee sustained injuries resulting in disability of a general nature such as would entitle him to compensation under this section. In addition to such injuries, he had also sustained injuries of a specific nature such as to entitle him to compensation under section 8081(mm). He is entitled to compensation for the specific injuries under section 8081(mm), and then, if still disabled as a result of the other injuries, compensation will be paid under this section. *Morgan v. Norwood*, 211 N. C. 600, 601, 191 S. E. 345, citing *Baughn v. Richmond Forging Co.*, Claim No. 70-597 which latter case gives a construction of the corresponding sections of the Virginia law by the Virginia Industrial Commission.

§ 8081(mm). Other rates of compensation.

See the note to the preceding section.

§ 8081(ggg). North Carolina industrial commission created; members appointed by governor; terms of office; chairman.

The Industrial Commission is primarily an administrative agency of the state, charged with the duty of administering the provisions of the North Carolina Workmen's Compensation Act. *Hanks v. Southern Public Utilities Co.*, 210 N. C. 312, 319, 186 S. E. 252, citing *In re Hayes*, 200 N. C. 133, 156 S. E. 791.

But Is Special Tribunal When Considering Claims.—When a claim for compensation has been filed and the employer and employee have failed to reach an agreement, the statute authorizes the Commission to hear and determine all matters in dispute. Thereupon, the Commission is constituted a special or limited tribunal, and is invested with certain judicial functions, and possesses the powers and incidents of a court, within the provisions of the act, and necessary to determine the rights and liabilities of employees and employers. *Hanks v. Southern Public Utilities Co.*, 210 N. C. 312, 319, 186 S. E. 252.

§ 8081(jjj). Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

Under this section the North Carolina Industrial Commission has the power not only to make rules governing its administration of the act, but also to construe and apply such rules. Its construction and application of its rules,

duly made and promulgated, in proceedings pending before the said Commission, ordinarily are final and conclusive and not subject to review by the courts of this state, on an appeal from an award made by said Industrial Commission. *Winslow v. Carolina Conference Ass'n*, 211 N. C. 571, 579, 191 S. E. 403.

§ 8081(mmm). In event of disagreement, commission is to make award after hearing.

Cited in *Hanks v. Southern Public Utilities Co.*, 210 N. C. 312, 186 S. E. 252.

§ 8081(ppp). Award conclusive as to facts; or certified questions of law.

Evidence Not Considered on Appeal.

On appeal from the North Carolina Industrial Commission, the Superior Court has no power to review the findings of fact by the Commission. It can consider only errors of law appearing in the record, as certified by the Industrial Commission. *Winslow v. Carolina Conference Ass'n*, 211 N. C. 571, 191 S. E. 403.

Findings Supported by Competent Evidence Are Conclusive on Appeal.—Where each of the essential facts found by the Industrial Commission is supported by competent evidence, the findings are conclusive on appeal, even though some incompetent evidence was also admitted upon the hearing. *Carlton v. Bernhardt-Seagle Co.*, 210 N. C. 655, 188 S. E. 77. See also, *Tomlinson v. Norwood*, 208 N. C. 716, 182 S. E. 659; *Swink v. Carolina Asbestos Co.*, 210 N. C. 303, 186 S. E. 258.

The Statutes Regulating Appeals from a Justice of the Peace Are Applicable.

But see *Winslow v. Carolina Conference Ass'n*, 211 N. C. 571, 191 S. E. 403, wherein it is said that statutory provisions with respect to appeals from judgments of justices of the peace to the Superior Court, where the trial must be de novo, are not controlling with respect to appeals from awards of the Industrial Commission to the Superior Court, where only errors of law appearing in the record may be considered.

Time within Which Transcript of Record Must Be Filed.

—In the absence of any requirement of the statute as to the time within which a transcript of the record in a proceeding before the Industrial Commission must be docketed in the Superior Court, when there has been an appeal from the award of the Commission, such docketing at any time before the convening of the next ensuing regular term of the Superior Court, or before said time has expired, is sufficient to perfect the appeal. *Winslow v. Carolina Conference Ass'n*, 211 N. C. 571, 581, 191 S. E. 403.

Applied in *Latham v. Southern Fish, etc., Co.*, 208 N. C. 505, 181 S. E. 640.

§ 8081(rrr). Expenses of appeals brought by insurers.

Discretion of Court.

Delete the title of the case, "State v. Davidson," and the citation at the end of the paragraph under this catchline and substitute in lieu thereof "Purdue v. State Board of Equalization", 205 N. C. 730, 735, 172 S. E. 396."

§ 8081(vvv). Employer's record and report of accidents; records of commission not open to public; supplementary report upon termination of disability; penalty for refusal to make report; when insurance carrier liable.

The report signed by the manager of an incorporated employer and filed with the Industrial Commission as required by this section, is competent upon the hearing and statements contained therein not within the personal knowledge of the manager are competent as an admission against interest. *Carlton v. Bernhardt-Seagle Co.*, 210 N. C. 655, 188 S. E. 77, wherein the instant section was inadvertently referred to as § 8181(vvv).

Where the employer has filed a report with the Commission within the prescribed time upon verbal information elicited from the representative of the employee by its claim agent, the representative being unable to read or write, and the employer admitting liability, the report has been filed with the Industrial Commission as a claim within one year from date of the accident and contains all facts necessary to make an award. *Hanks v. Southern Public Utilities Co.*, 210 N. C. 312, 186 S. E. 252.

§ 8081(www). Adhering employers required to

carry group insurance; prove financial ability to pay for benefits.

An award was entered in favor of the dependents of a deceased employee for payment of compensation in weekly installments for the death of the employee. After the insurance carrier had paid several installments, it defaulted in the payment of the balance because of insolvency. Under the provisions of the Compensation Act the employer is primarily liable to the employee; which obligation is unimpaired by its contract with an insurer for insurance protection, or by the insurer's subrogation to the rights of the employer upon paying or assuming the payment of an award, and the employer is not relieved of its liability to the dependents of the deceased employee for the balance of the weekly payments because of the insolvency of the insurer. *Roberts v. City Ice, etc., Co.*, 210 N. C. 17, 185 S. E. 438.

The employer, held liable for the balance of an award after the insolvency of the insurer, is not entitled to a credit for the amount paid the dependents out of the judgment against the third person tort-feasor or for the amount paid plaintiff's attorneys in that action, the amount paid the dependents out of the judgment being an amount in addition to the award, and the award not being subject to reduction by such amount. *Id.*

§ 8081(xxx). Adhering employers required to give proof within 30 days that they have complied with preceding section; fine for not keeping liability insured; review; liability for compensation.

Quoted in *Roberts v. City Ice, etc., Co.*, 210 N. C. 17, 185 S. E. 438.

APPENDICES

I. Constitution of the State of North Carolina

VII. Rules of Court

APPENDIX I

CONSTITUTION OF THE STATE OF NORTH CAROLINA

ARTICLE I

Declaration of Rights

§ 2. Political power and government.

Repeal of Laws.—It is axiomatic that since all political power is derived from the people and all government originates from them, the sovereign power of the people, expressed through their chosen representatives in the General Assembly, is supreme, and a law by them enacted may not be set aside by the courts unless it contravenes some prohibition or mandate of the Constitution by which the people of the state have elected to be limited and restrained, or unless it violates some provision of the granted powers of Federal Government contained in the Constitution of the United States. *State v. Warren*, 211 N. C. 75, 80, 189 S. E. 108.

§ 7. Exclusive emoluments, etc.

This section is a fundamental democratic principle of "equal rights and opportunities to all, special privileges to none." *Newman v. Watkins*, 208 N. C. 675, 679, 182 S. E. 453, dissenting opinion of Justice Clarkson.

Applied, in dissenting opinion, in *Blevins v. Northwest Carolina Utilities*, 209 N. C. 683, 184 S. E. 517; *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 185 S. E. 482, holding § 2593(d) constitutional and valid; *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809, holding valid § 6649(17), requiring a second examination of former licensed dentists returning to the state; *Cowan v. Security Life, etc., Co.*, 211 N. C. 18, 188 S. E. 812, holding § 6291 does not authorize insurance companies to charge more than six per cent interest; *State v. Warren*, 211 N. C. 75, 189 S. E. 108, holding invalid ch. 241, Public-Local Laws 1927, requiring real estate brokers and salesmen to be licensed by a special commission in designated counties.

Quoted in *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

Cited in *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

§ 8. The legislative, executive and judicial powers distinct.

Power of County to Apply Formula for Ascertaining Taxable Property.—Plaintiff county ascertained the amount of personal property of defendant nonresident corporation having a "business situs" in this state, and liable for taxation as solvent credits by the county by ascertaining the total assets of the defendant and the percentage of such assets found in the county, and allowing the same per cent of its total liabilities to be deducted therefrom. Defendant complained that defendant county had made its own rule in ascertaining the solvent credits in the county subject to taxation in violation of this section, but since defendant failed to list its solvent credits for taxation as required by law, it was not prejudiced by the assessment of its personal property for taxation as determined by the county. *Mecklenburg County v. Sterchi Bros. Stores*, 210 N. C. 79, 185 S. E. 454.

Cited in *Castevens v. Stanly County*, 211 N. C. 642, 191 S. E. 739.

§ 10. Elections free.

Quoted in *Swaringen v. Poplin*, 211 N. C. 700, 191 S. E. 746.

§ 11. In criminal prosecutions.

For article discussing the limits to confrontation, see 15 N. C. Law Rev., No. 3, p. 229.

Private Counsel May Assist Solicitor in Trial of Case.—The trial court has discretionary power to allow private

counsel to assist the solicitor in the trial of a case, it being the duty of the court to permit only such assistance as fairness and justice may require, and such power does not impinge the provisions of this section of the Constitution. *State v. Carden*, 209 N. C. 404, 183 S. E. 898.

The right of a defendant to confront his accusers includes the right to cross-examine them on any subject touched on in their examination-in-chief, and a witness testifying to facts incriminating defendant on his examination-in-chief may not deprive defendant of his right to cross-examine him on the ground that answers to questions asked on cross-examination might tend to incriminate the witness. *State v. Perry*, 210 N. C. 796, 188 S. E. 639.

Hence Accomplice Can Not Refuse to Answer on Cross-Examination after Incriminating Defendant.—An accomplice may not testify on direct examination to facts tending to incriminate defendant and at the same time refuse to answer questions on cross-examination relating to matters embraced in his examination-in-chief, and where he refuses to answer relevant questions on cross-examination on the ground that his answers might tend to incriminate him, it is error for the court to refuse defendant's motion that his testimony-in-chief be stricken from the record, the refusal to answer the questions on cross-examination rendering the testimony-in-chief incompetent. *State v. Perry*, 210 N. C. 796, 188 S. E. 639.

§ 12. Answers to criminal charges.

Necessity for Order for Grand Jury During Special Term.—

In accord with original. See *State v. Boykin*, 211 N. C. 407, 191 S. E. 18.

Effect of Invalid Indictment.—When the indictment charging defendant with the commission of crime is invalid, defendant's motion to dismiss the action for want of jurisdiction should be allowed. *State v. Beasley*, 208 N. C. 318, 180 S. E. 593.

Applied in *State v. Watson*, 209 N. C. 229, 183 S. E. 286.

§ 13. Right of jury.

Jury Trial Can Not Be Waived after Plea of Not Guilty.—The constitutional right to trial by jury in the Superior Court can not be waived by accused after a plea of not guilty. Hence § 4636(a) is unconstitutional in that it provides for trial by the court as upon a plea of "not guilty" when a defendant enters a "conditional plea." *State v. Camby*, 209 N. C. 50, 182 S. E. 715.

A defendant in a criminal prosecution for a felony or a misdemeanor may not waive his constitutional right to trial by jury in the Superior Court after entering a plea of "Not guilty", without changing his plea, nor may the General Assembly permit him to do so by statute, and where the court, after a plea of "Not guilty," finds the defendant guilty without a jury trial, the judgment will be stricken out and the cause remanded. *State v. Hill*, 209 N. C. 53, 182 S. E. 716.

Separate Provisions for Petty Misdemeanors.—

In accord with original. See *State v. Boykin*, 211 N. C. 407, 191 S. E. 18.

Trial of Petty Misdemeanors.—It is permissible under this section for the General Assembly to provide for the trial of petty misdemeanors in inferior courts with the right of appeal to the Superior Court. *State v. Camby*, 209 N. C. 50, 52, 182 S. E. 715, citing *State v. Pasley*, 180 N. C. 695, 104 S. E. 533; *State v. Tate*, 169 N. C. 373, 85 S. E. 383; *State v. Hyman*, 164 N. C. 411, 79 S. E. 284; *State v. Brittain*, 143 N. C. 668, 57 S. E. 352; *State v. Lytle*, 138 N. C. 738, 51 S. E. 66.

Applied in *State v. Watson*, 209 N. C. 229, 183 S. E. 286.

§ 15. General warrants.

For a discussion of the statutes enacted pursuant to this provision, see 15 N. C. Law Rev., No. 2, p. 101. As to limitations on investigating officers, see 15 N. C. Law Rev., No. 3, p. 229.

This provision is a limitation on state and local officers. 15 N. C. Law Rev., No. 3, p. 232.

§ 16. Imprisonment for debt.

No Imprisonment Except Where There Is Fraud.—"This section clearly means that there shall at least be no imprisonment to enforce the payment of a debt under final process, unless it has been adjudged, upon an allegation duly made in the complaint and a corresponding issue found by a jury, that there has been fraud. . . ." *East Coast Fertilizer Co. v. Hardee*, 211 N. C. 653, 657, 191 S. E. 725, quoting from *Ledford v. Emerson*, 143 N. C. 527, 55 S. E. 969, 10 L. R. A. (N. S.) 362.

§ 17. No person taken, etc., but by law of land.

Statute Providing Service of Summons by Publication on Taxpayers Is Valid.—The statute (§ 2492(55) et seq.), conferring jurisdiction upon the Superior Courts of the counties over citizens and owners of taxable property within the county without requiring each such owner or citizen to be named as a party in the complaint or summons and providing for service of summons by publication, is not a violation of this section. *Castevens v. Stanly County*, 211 N. C. 642, 191 S. E. 739.

Section 2593(d) is constitutional and valid, since it recognizes the obligation of the debtor to pay his debt and the right of the creditor to enforce payment by action in accordance with the terms of the agreement, but provides merely for judicial supervision of sales under power to the end that the price bid at the sale shall not be conclusive as to the value of the property, and that the creditor may not recover any deficiency after applying the purchase price to the notes without first accounting for the fair value of the property in accordance with well settled principles of equity. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 185 S. E. 482.

The 1933 amendment to § 867 is constitutional, since it does not impair the obligations of a contract under this section, the effect of the statute being merely to alter the method of procedure in which there can be no vested right. *Sovereign Camp, W. O. W. v. Board of Com'rs*, 208 N. C. 433, 181 S. E. 339.

Defendants Are Not Twice Put in Jeopardy by Second Arraignment.—Where each defendant has been separately arraigned and has pleaded to the bill of indictment, following which the cases are continued to the next term of court, defendants are not twice put in jeopardy by a second arraignment when the cases are called for trial the following term. *State v. Watson*, 209 N. C. 229, 183 S. E. 286.

Assessments without Notice, etc., Are Void.—Street assessments made under charter provisions failing to provide notice and an opportunity to be heard to those assessed are void as violating due process of law, and may not be validated by curative acts of the Legislature. *Lexington v. Lopp*, 210 N. C. 196, 185 S. E. 766.

Applied in *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490, holding ch. 342, Public-Local Laws 1935 valid.

Cited in *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809.

§ 21. Habeas corpus.

Stated in *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684.

§ 27. Education.

Applied in *Mecklenburg County v. Piedmont Fire Ins. Co.*, 210 N. C. 171, 185 S. E. 654.

§ 31. Perpetuities, etc.

This section is a fundamental democratic principle of "equal rights and opportunities to all, special privileges to none." *Newman v. Watkins*, 208 N. C. 675, 679, 182 S. E. 453, dissenting opinion of Justice Clarkson.

Statute Requiring Examination of Former Dentists Returning to State Is Valid.—Section 6649(17) providing that a licensed dentist who retires or removes from the state must pass an examination upon returning to the state does not confer exclusive emoluments and privileges on continuously practicing dentists contrary to the provisions of this and the preceding section. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 89.

Applied in *State v. Warren*, 211 N. C. 75, 189 S. E. 108, holding ch. 241, Public-Local Laws 1927 unconstitutional; *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240.

Quoted in *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412.

Cited in *Cowan v. Security Life, etc., Co.*, 211 N. C. 18, 188 S. E. 812.

§ 32. Ex post facto laws.

Cited in *State v. Hester*, 209 N. C. 99, 182 S. E. 738.

§ 35. Courts shall be open.

Section 2593(d) is constitutional and valid, since it recognizes the obligation of the debtor to pay his debt and the right of the creditor to enforce payment by action in accordance with the terms of the agreement, but provides merely for judicial supervision of sales under power to the end that the price bid at the sale shall not be conclusive as to the value of the property, and that the creditor may not recover any deficiency after applying the purchase price to the notes without first accounting for the fair value of the property in accordance with well settled principles of equity. *Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co.*, 210 N. C. 29, 185 S. E. 482.

Quoted, in dissenting opinion, in *Lucas v. Midgette*, 208 N. C. 699, 182 S. E. 328.

ARTICLE II

Legislative Department

§ 1. Two branches.

Cited in *State v. Brockwell*, 209 N. C. 209, 183 S. E. 378.

§ 14. Revenue.

II. GENERAL CONSIDERATIONS.

Cited in *Newman v. Watkins*, 208 N. C. 675, 182 S. E. 453.

IV. THE JOURNAL—SPEAKERS' CERTIFICATES.

Journals Conclusive.—

It appears from the Journal of each house of the General Assembly that the last paragraph of § 1335 was enacted in accordance with the requirements of this section. *Martin v. Board of Com'rs*, 208 N. C. 354, 365, 180 S. E. 777.

§ 29. Limitations upon power of General Assembly to enact private or special legislation.

Establishment of Recorders' Courts.—

Ch. 286, Public-Local Laws of 1925, providing for the establishment of township recorder's courts in one specified county is unconstitutional and void as being a local act relating to the establishment of courts inferior to the Superior Court, prohibited by this section. *State v. Williams*, 209 N. C. 57, 182 S. E. 711.

Substitution of Road Control.—

In accord with second paragraph in original. See *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490.

Closing Public Roads.—Part of land in a private development was added to the playground of a public school. The General Assembly, by private act (ch. 72, Private Laws of 1933), declared that certain roads dedicated in the registered plot of the development were no longer needed, and declared that the roads should be closed and added to the playground space for the school. This act is void as being a private or special act inhibited by this section. *Glenn v. Board of Education*, 210 N. C. 525, 185 S. E. 781.

Chapter 216, Priv. Laws 1925, is not a special statute relating to roads inhibited by this section, the act not relating to the laying out, opening, altering, or discontinuance of any particular and designated highway, street, or alley. *Deese v. Lumberton*, 211 N. C. 31, 188 S. E. 857.

Applied, in dissenting opinion, in *Sprunt v. Hewlett*, 208 N. C. 695, 182 S. E. 655.

Cited in *Newman v. Watkins*, 208 N. C. 675, 182 S. E. 453.

ARTICLE III

Executive Department

§ 18. Department of Justice.

Proposed Amendment.—Public Laws 1937, c. 447, proposed an amendment to this article, to be voted on at the next general election, by adding a new section as follows: "The General Assembly is authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the State."

ARTICLE IV

Judicial Department

§ 1. Abolishes the distinctions between actions at law and suits in equity, and feigned issues.

Effect of Section.—

In accord with the three paragraphs under this catchline in the original. See *Reynolds v. Reynolds*, 208 N. C. 578, 182 S. E. 341.

Applied in *Wolfe v. Galloway*, 211 N. C. 361, 190 S. E. 213.

§ 2. Division of judicial powers.

Power to Determine Validity of Statute.—The courts of this state have the power and in a proper case it is their duty, in the exercise of the judicial power vested in them by the Constitution of this state to decide whether or not a statute is valid. *State v. Brockwell*, 209 N. C. 209, 211, 183 S. E. 378.

§ 6. Supreme Court.—The Supreme Court shall consist of a Chief Justice and four Associate Justices. The General Assembly may increase the number of Associate Justices to not more than six, when the work of the Court so requires. The Court shall have power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by a majority of all the Justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court en bloc. All sessions of the Court shall be held in the city of Raleigh. This amendment made to the Constitution of North Carolina shall not have the effect to vacate any office or term of office now existing under the Constitution of the State, and filled or held by virtue of any election or appointment under the said Constitution, and the laws of the State made in pursuance thereof.

Editor's Note.—The amendment which added all of this section after the first sentence, was proposed by Public Laws 1935, c. 444, s. 1, and adopted at the general election held in November 1936.

§ 8. Jurisdiction of Supreme Court.

What Reviewable.—

In accord with second paragraph in original. See *State v. Anderson*, 208 N. C. 771, 182 S. E. 643.

In accord with fourth paragraph in original. See *State v. Jackson*, 211 N. C. 202, 189 S. E. 510.

Theory of Trial in Lower Court Is Adhered to.—

In accord with original. See *Ammons v. Fisher*, 208 N. C. 712, 182 S. E. 479.

Habeas Corpus.—

A decree in habeas corpus proceedings to determine the custody of a child as between its divorced parents is not appealable, the sole remedy being by certiorari to invoke the constitutional power of the Supreme Court to supervise and control proceedings of inferior courts. In *re Ogden*, 211 N. C. 100, 189 S. E. 119.

Writ of Certiorari.—Where an application for writ of certiorari in the nature of a writ of error is made for the purpose of bringing up an appeal when the right of appeal is lost in the trial court by failure to file statement of case on appeal within the time allowed, applicant must negative laches and show merit. *State v. Moore*, 210 N. C. 686, 188 S. E. 421.

§ 11. Residences of judges; rotation in judicial districts; and special terms.

Residence Requirement Does Not Confer Jurisdiction.—No jurisdiction is conferred upon a resident judge by the requirement of this section that every judge of the Superior Court shall reside in the district for which he is elected. *Howard v. Queen City Coach Co.*, 211 N. C. 329, 331, 190 S. E. 478.

§ 12. Jurisdiction of courts inferior to Supreme Court.

An allotment or division of jurisdiction is within the contemplation of this section. The Legislature may therefore allot inferior courts a portion of the jurisdiction of the Superior Court, providing also for the right of appeal. *Essex Inv. Co. v. Pickelsimer*, 210 N. C. 541, 543, 187 S. E. 813, quoting *Jones v. Standard Oil Co.*, 202 N. C. 328, 162 S. E. 741.

Cited in *Castevens v. Stanly County*, 211 N. C. 642, 191 S. E. 739.

§ 13. In case of waiver of trial by jury.

Waiver by Agreement.—Where the case on appeal recites that the parties agreed that the court might render judgment out of term and out of the district, and the judgment recites the same, appellant's contention that trial by the court had not been agreed upon cannot be sustained, since trial by jury would be impossible under the agreement that judgment might be rendered out of term and out of the district. *Odom v. Palmer*, 209 N. C. 93, 182 S. E. 741.

§ 20. Disposition of actions at law and suits in equity, pending when this Constitution shall go into effect, etc.

Cited in *Reynolds v. Reynolds*, 208 N. C. 578, 182 S. E. 341.

§ 24. Sheriffs and coroners.

Proposed Amendment.—Public Laws 1937, c. 241, proposed that this section be amended, subject to vote at the next general election, to read as follows: "In each county a sheriff and a coroner shall be elected by the qualified voters thereof as is prescribed for the members of the General Assembly, and shall hold their offices for a period of four years. In each township there shall be a constable elected in like manner by the voters thereof, who shall hold his office for a period of two years. When there is no coroner in a county the Clerk of the Superior Court for the county may appoint one for special cases. In case of a vacancy existing for any cause in any of the offices created by this section the commissioners of the county may appoint to such office for the unexpired terms."

§ 28. Vacancies in office of justices.

Appointments Must Be Made by Clerk of Superior Court.—An examination of the Constitution reveals the fact that the only power or duty of a clerk of the Superior Court mentioned therein is in this section, which provides that vacancies in the office of justice of the peace shall be filled by appointment by the clerk of the Superior Court, and this function of the office, we apprehend, must still be performed by the clerk alone. In *re Barker*, 210 N. C. 617, 619, 188 S. E. 205.

§ 32. Removal of clerks of the various courts for inability.

Quoted in *Stephens v. Dowell*, 208 N. C. 555, 181 S. E. 629, wherein city commissioners were held without authority to dismiss clerk of municipal court without notice and opportunity to be heard.

ARTICLE V

Revenue and Taxation

§ 3. State taxation.—The power of taxation shall be exercised in a just and equitable manner, and shall never be surrendered, suspended, or contracted away. Taxes on property shall be uniform as to each class of property taxed. Taxes shall be levied only for public purposes, and every act levying a tax shall state the object to which it is to be applied. The General Assembly may also tax trades, professions, franchises, and incomes: Provided, the rate of tax on income shall not in any case exceed ten per cent (10%), and there shall be allowed the following exemptions, to be deducted from the amount of annual incomes, to wit: for married man with a wife living with him, or to a widow or widower having minor child or children, natural or adopted, not less than \$2,000; to all other persons not less than \$1,000, and there may be allowed other deductions (not including living expenses) so that only net incomes are taxed.

Editor's Note.—The amendment of this section was proposed by Public Laws 1935, c. 248, ss. 1, 2, and adopted at the general election held in November 1936.

What May Be Taxed.—

Under this section all property, real and personal, is subject to taxation, unless exempt from taxation by the Constitution. *Hardware Mut. Fire Ins. Co. v. Stinson*, 210 N. C. 69, 185 S. E. 449.

Tax on Personal Property Owned by Nonresidents.—Sec-

tion 7971(18), subdivision (6), does not exempt from ad valorem taxes in this state personal property owned by non-residents when such personal property has a taxable situs in this state, it being the intent to subject all property to ad valorem taxation unless such property is exempt under the Constitution. *Mecklenburg County v. Sterchi Bros. Stores*, 210 N. C. 79, 185 S. E. 454.

The tax levied under § 7880(156) e, subsec. 13, was held not void as discriminatory in amount because of the provision of the section that such tax need not be paid when the owner furnishes a certificate from a dealer in this state to the effect that the tax has been paid, and that such dealer will be responsible therefor to the Commissioner of Revenue, since the section requires the same amount to be paid regardless of whether the car is purchased from a dealer within or outside the state. *Powell v. Maxwell*, 210 N. C. 211, 186 S. E. 326.

Section 7971(18) was enacted in obedience to the mandate of this section. *Lawrence v. Shaw*, 210 N. C. 352, 361, 186 S. E. 504.

Special License Tax on Real Estate Brokers Discriminatory.—Chapter 241, Public-Local Laws 1927, requiring real estate brokers in certain designated counties to be licensed by a real estate commission on the basis of moral character and proficiency in the public interest, and requiring payment of a license fee in addition to the state-wide license required, is unconstitutional as it applies only to the real estate brokers in the designated counties and is therefore discriminatory. *State v. Warren*, 211 N. C. 75, 189 S. E. 108.

Applied in *State v. Bridgers*, 211 N. C. 235, 189 S. E. 869. **Quoted in** *Mecklenburg County v. Piedmont Fire Ins. Co.*, 210 N. C. 171, 185 S. E. 654.

§ 4. Limitations upon the increase of public debts.—The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to contract debts and pledge their faith and credit, for the following purposes: To fund or refund a valid existing debt; to borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes; to supply a casual deficit; to suppress riots or insurrections, or to repel invasions. For any purpose other than these enumerated the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State; and for any purpose other than these enumerated the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular county or municipality. In any election held in the State or in any county or municipality under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon.

Editor's Note.—The amendment was proposed by Public

Laws 1935, c. 248, s. 3, and adopted at the general election held in November 1936.

Section Does Not Apply to Insuring School Property.—A county board of education has the authority to insure school property in a mutual fire insurance company authorized to do business in this state, and assume the contingent liability limited to the amount of the cash premium, and the execution of such policy does not lend the credit of the state to a private corporation under this section. *Fuller v. Lockhart*, 209 N. C. 61, 182 S. E. 733.

§ 5. Property exempt from taxation.—Property belonging to the State or to municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. The General Assembly may exempt from taxation not exceeding one thousand dollars (\$1,000.00) in value of property held and used as the place of residence of the owner.

Editor's Note.—The amendment, which added the last sentence of this section, was proposed by Public Laws 1935, c. 444, s. 2, and adopted at the general election held in November 1936.

The amendment of 1936 is only permissive in terms and not self-executing. The power of exemption, to the extent therein mentioned, is exercisable, in whole or in part, or not at all, as the General Assembly, in its wisdom, shall determine. *Nash v. Board of Com'rs*, 211 N. C. 301, 304, 190 S. E. 475.

Municipal Bonds to Provide Schoolhouses and Equipment Are Exempt.—Bonds issued by a municipality to provide schoolhouses and equipment were for a public purpose, and § 7971(19), in effect at the time the bonds were issued, is constitutional and valid, the Legislature having been given authority by this section to provide for such exemption from ad valorem taxation. Since the bonds, although the property of a private corporation, were issued for a necessary public purpose and purchased in reliance upon the statutory provision exempting them from taxation, they stand upon the same footing as the school buildings erected with the proceeds of the bonds. *Mecklenburg County v. Piedmont Fire Ins. Co.*, 210 N. C. 171, 185 S. E. 654.

Municipal property acquired by tax foreclosure and subsequently rented is liable for county taxes, since it is not used by the city for a governmental purpose, and therefore does not come within the constitutional provision for the exemption of property from taxation. *Benson v. Johnston County*, 209 N. C. 751, 185 S. E. 6. See also, in this connection, *Board of Financial Control v. Henderson County*, 208 N. C. 569, 181 S. E. 636, 101 A. L. R. 783.

§ 6. Taxes levied for counties.

General or Special Act Suffices.—

The last paragraph of § 1335, authorizing a county to levy a tax to pay a public hospital for the care and hospitalization of the indigent sick of the county under a contract with a hospital does not violate this section since the tax contemplated is for a special, necessary purpose, with special approval of the General Assembly. *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777.

Bonds Issued to Refund Other Bonds.—

Under ch. 342, Public-Local Laws 1935, defendant county proposed to issue county bonds to refinance bonds issued by the townships of the county. The proceeds of the township bonds were used in the construction of highways which were later taken over by the county and thereafter by the state. The proposed county bond issue is for a county purpose within the meaning of this section. *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490.

A county has authority to issue funding and refunding bonds.

In accord with original. See *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490.

Bonds for Erection of Jail.—Where the erection of a new jail was a public necessity, bonds necessary to provide funds for the erection are for a special necessary county expense under §§ 1297, 1317, and the taxes necessary to pay principal and interest of such bond issue are not subject to

limitation on the tax rate. *Castevens v. Stanly County*, 209 N. C. 75, 183 S. E. 3.

Cited in *Castevens v. Stanly County*, 211 N. C. 642, 191 S. E. 739.

ARTICLE VI

Suffrage and Eligibility to Office

§ 1. Who may vote.

Cited in *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

§ 2. Qualifications of voters.

Cited in *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

§ 3. Voters to be registered.

Act Requiring Proof of Ability to Read and Write Is Valid.—The provisions of § 5939 providing that a person presenting himself for registration shall, before he is registered, prove to the satisfaction of the registrar his ability to read and write any section of the Constitution, was held valid, since the authority was granted the Legislature by this section to enact general legislation to carry out the provisions of this article. *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

§ 4. Qualification for registration.

The language of this section is mandatory. *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

Registrar Is Logical Person to Carry Out Requirements of Section.—As this section of the Constitution says "presenting himself for registration," someone has to determine whether or not the person shall be able to read and write any section of the Constitution in the English language. Section 5939, putting this duty on the registrar is unquestionably a reasonable provision, and the registrar is the logical person to carry out the provisions of the Constitution. *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

ARTICLE VII

Municipal Corporations

§ 1. County officers.

County Commissioners.—Ch. 526, Public-Local Laws of 1935, providing that Cherokee County should be divided into three districts and that one county commissioner should be nominated and elected by the qualified voters of each of the districts, is constitutional as a valid exercise of legislative power over municipal corporations, the General Assembly being given express power by art. VII, § 14, to change and modify the provisions of this section, relating to number and election of county commissioners. *Watkins v. Johnson*, 210 N. C. 449, 187 S. E. 584.

§ 2. Duty of county commissioners.

The General Assembly can give almost unlimited power to the counties to carry out this provision. *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490.

Supervision and Control of Roads.—Under this section the commissioners of a county have the duty to exercise a general supervision and control of the roads and levying of taxes as prescribed by law in reference to roads. *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490.

Applied in *Reen v. Farmer*, 211 N. C. 249, 189 S. E. 882.

§ 7. No debt or loan except by a majority of voters.

II. GENERAL CONSIDERATION.

The only way to preserve the vitality of this section and § 6 of article 5 is to adhere to the construction, that the 'special purpose' for which the 'special approval' of the General Assembly is essential must be for a 'necessary expense' in contemplation of the constitutional provision. *Castevens v. Stanly County*, 209 N. C. 75, 183 S. E. 3, citing *Glenn v. Board of County Com'rs*, 201 N. C. 233, 159 S. E. 439.

When Funds Are Already on Hand.

The acquisition of the land for a municipal airport from surplus funds was not beyond the power of the city and it in no way offended the provisions of this section. *Goswick v. Durham*, 211 N. C. 687, 189 S. E. 728.

Cited in *Castevens v. Stanly County*, 211 N. C. 642, 191 S. E. 739.

III. NECESSARY EXPENSES.

A. General Considerations and Applications.

Legislative Declaration and Municipal Commissioners Finding That Tax Is for Necessary Expense Is Not Controlling.—The declaration of the General Assembly in a

statute authorizing a municipality to levy a tax and the finding of the municipal commissioners that the tax is for a necessary municipal expense within the meaning of this section, is not controlling, but, when made in good faith, such declaration and finding are persuasive, and are entitled to serious consideration by the courts in determining whether the purpose for which the tax is proposed to be levied is for a necessary municipal expense within the meaning of term as used in the Constitution. *Martin v. Raleigh*, 208 N. C. 369, 180 S. E. 786.

What Are "Necessary Expenses."

In addition to the authorities cited in the third paragraph, see *Board of Financial Control v. Henderson County*, 208 N. C. 569, 181 S. E. 636, 101 A. L. R. 783, as to a municipal electric plant being a necessary expense.

In addition to the authorities cited in the eighth paragraph see *Burt v. Biscoe*, 209 N. C. 70, 183 S. E. 1.

The sale of refunding bonds under § 1334(8), subsection (j), is a necessary expense. *Morrow v. Durham*, 210 N. C. 564, 187 S. E. 752. So also is the issuance of bonds by a county to refinance highway bonds issued by its townships. *Thomson v. Harnett County*, 209 N. C. 662, 184 S. E. 490. The expense of providing for the medical treatment and hospital care of the indigent sick and afflicted poor under § 2795 is a necessary expense of a city. *Martin v. Raleigh*, 208 N. C. 369, 180 S. E. 786. See also, *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777.

The sale of intoxicating liquor is not a "necessary expense," nor is it a public purpose or undertaking. *Newman v. Watkins*, 208 N. C. 675, 182 S. E. 453.

While there is no contention that the construction, equipment, and maintenance of an airport and landing field is a necessary municipal expense within the meaning of this section, yet it may not be improper to say that man's constantly advancing progress in the conquest of the air as a medium for the transportation of commerce and for public and private use indicates the practical advantage and possible future necessity of adequate landing facilities to the same extent that paved streets and roads are now regarded for the purposes of communication and transportation on land. *Goswick v. Durham*, 211 N. C. 687, 189 S. E. 728, citing *Hargrave v. Board of Com'rs*, 168 N. C. 626, 84 S. E. 1044; *Dysart v. St. Louis*, 321 Mo. 514, 11 S. W. (2d) 1045.

B. School Taxation.

Premiums for insurance of its public school buildings is a necessary public expense of a county. *Fuller v. Lockhart*, 209 N. C. 61, 182 S. E. 733.

Liability for bonds for unnecessary school buildings is not a necessary expense. *Greensboro v. Guilford County*, 209 N. C. 655, 184 S. E. 473.

§ 8. No money drawn except by law.

Cited in *Reed v. Farmer*, 211 N. C. 249, 189 S. E. 882.

§ 9. When officers enter on duty.—The county officers first elected under the provisions of this article shall enter upon their duties ten days after the approval of this Constitution by the Congress of the United States.

Editor's Note.—The amendment, which struck out former section 9 and renumbered the remaining sections under this article, was proposed by Public Laws 1935, c. 248, s. 1, and adopted at the general election held in November 1936.

§ 10. Governor to appoint justices.—The Governor shall appoint a sufficient number of justices of the peace in each county, who shall hold their places until sections four, five, and six of this article shall have been carried into effect.

§ 11. Charters to remain in force until legally changed.—All charters, ordinances, and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this Constitution.

§ 12. Debts in aid of the rebellion not to be paid.—No county, city, town, or other municipal corporation shall assume to pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid of or support of the rebellion.

§ 13. Powers of General Assembly over mu-

municipal corporations.—The General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions of this article, and substitute others in their place, except sections seven, nine and thirteen.

Editor's Note.—Section 9 referred to in this section has been repealed, and section 13, also referred to, is now section 12. See note under section 9.

Dividing County into Three Districts.—Chapter 526, Public-Local Laws 1935, providing that Cherokee County be divided into three districts and a commissioner elected from each district falls well within the full power given the General Assembly by this section. *Watkins v. Johnson*, 210 N. C. 449, 451, 187 S. E. 584.

ARTICLE VIII

Corporations Other than Municipal

§ 1. Corporations under general laws.

Providing for Liability of Bank Stockholders Is Valid Exercise of Power.—Section 225(o), providing for the individual liability of stockholders in banks was enacted by the General Assembly in the valid exercise of its power to alter, by a general law or by a special act, the law under which any corporation is created. *Hood v. Hewitt*, 209 N. C. 810, 815, 185 S. E. 161.

§ 4. Legislature to provide for organizing cities, towns, etc.

Alteration of Charter Not Forbidden.—In accord with original. See *Deese v. Lumberton*, 211 N. C. 31, 188 S. E. 857.

Control of Finances.—The legislature has plenary power to control the finances of the municipal corporations which it creates, and to direct how their revenues shall be applied. Hence it can direct that revenues derived from municipal enterprises shall be applied on outstanding bonds as well as upon bonds to be issued thereafter. *George v. Asheville*, 80 F. (2d) 50, 55, 103 A. L. R. 568.

ARTICLE IX

Education

§ 1. Education shall be encouraged.

This and the following sections are mandatory in their provisions. *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873.

§ 2. General Assembly shall provide for schools; separation of the races.

Duty on Legislature—Mandatory.—In accord with original. See *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873.

Exemption of School Bonds from Taxation Is Valid.—Bonds issued by a city as an administrative agency of the state to provide schoolhouses and equipment are for a public purpose, and § 7971(19), exempting such bonds from taxation is valid. Since the bonds, although the property of a private corporation, were issued for a necessary public purpose and purchased in reliance upon the statutory exemption from taxation, they stand upon the same footing as the school buildings erected with the proceeds of the bonds. *Mecklenburg County v. Piedmont Fire Ins. Co.*, 210 N. C. 171, 185 S. E. 654.

County Need Not Assume Bonds of Unnecessary School Buildings.—Where a special charter school district and a city operating schools within a special charter school district coterminous with its corporate limits, issue bonds, respectively, for school sites, buildings, and maintenance of schools in order to provide better schools within the districts than those provided by the General Assembly for the county generally, in accordance with intent of the General Assembly in creating such special charter districts, but at the time such bonds are issued they are not reasonably essential and necessary for the operation of schools in the districts for the minimum constitutional term of six months, the city and special charter school district are not entitled to mandamus to force the county to assume such bonds upon the taking over by the county of the buildings as a part of the general system of public schools. *Greensboro v. Guilford County*, 209 N. C. 655, 184 S. E. 473.

Cited in *Allison v. Sharp*, 209 N. C. 477, 184 S. E. 27.

§ 3. Counties to be divided into districts.

This section is mandatory.
In accord with original. See *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873.

Issuance of Mandamus.—In accord with original. See *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873, citing *Hickory v. Catawba County*, 206 N. C. 165, 173 S. E. 56, where it was held that resort may be had to the courts to compel performance of the duties of this section by mandamus when indictment of the defendants would not be an adequate remedy.

It is the duty of the state under this section to provide a general and uniform state system of public schools of at least six months in every year wherein tuition shall be free of charge to all the children of the state between the ages of six and twenty-one. It is a necessary expense and a vote of the people is not required to make effective these and other constitutional provisions in relation to the public school system of the state. *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 223, 189 S. E. 873.

Discretion of General Assembly Rules as to Financing Public School System.—Under the mandatory provision of this section in relation to the public school system of the state, the financing of the public school system of the state is in the discretion of the General Assembly by appropriate legislation, either by state appropriation or through the county acting as an administrative agency of the state. *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 223, 189 S. E. 873.

Building and Equipment Necessary for School Term.—Under this section sites, buildings, and equipment acquired, constructed, and used by a school district were deemed reasonably essential and necessary for the conduct and operation of the six months school term at the time the said sites, buildings, and equipment were acquired and constructed. *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 225, 189 S. E. 873.

Quoted in *Mecklenburg County v. Piedmont Fire Ins. Co.*, 210 N. C. 171, 185 S. E. 654.

Cited in *Greensboro v. Guilford County*, 209 N. C. 655, 184 S. E. 473.

ARTICLE X

Homesteads and Exemptions

§ 1. Exemptions of personal property.

A Constitutional Right.—In accord with original. See *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

A debtor may legally demand his personal property exemption at any time and to the last moment before the appropriation thereof by the court, and the order of court directing a payment of the money derived from the sale of such property is final process within the meaning of the Constitution giving the creditor such right until execution or other final process. *Crow v. Morgan*, 210 N. C. 153, 156, 185 S. E. 668.

§ 2. Homestead.

The right to the homestead exemption is not forfeited by a fraudulent conveyance, and the judgment was properly modified by order directing that defendant be allotted his homestead in the land which should be exempt from sale by the commissioner. *New Amsterdam Cas. Co. v. Dunn*, 209 N. C. 736, 184 S. E. 488.

Exemption Allowed in Mortgaged Lands.—A debtor may have his homestead exemption allotted in lands owned by him but mortgaged to a third person, but in ascertaining the value thereof the mortgage debt should be disregarded, and the land appraised as though the debtor owned the unencumbered fee. *Crow v. Morgan*, 210 N. C. 153, 185 S. E. 668.

Or Vacant Lots.—Where the only real property owned by a judgment debtor consists of vacant lots, he may claim his homestead therein, since he may thereafter build a habitable structure thereon. *Equitable Life Assur. Soc. v. Russos*, 210 N. C. 121, 185 S. E. 632.

§ 5. Benefit of widow.

Cited in *Pence v. Price*, 211 N. C. 707, 715.

§ 6. Property of married women secured to them.

The purpose of requiring the written assent is to afford the wife the counsel and protection of her husband, and not to convey any estate in the realty. When he signs it under her signature and then acknowledges the execution of

the deed as one of the grantors, but one inference can arise, and that is that he was giving his required written assent to her conveyance. *Joiner v. Firemen's Ins. Co.*, 6 F. Supp. 103, 104.

Sufficiency of Husband's Written Assent.—Since the deed of the husband conveys no title to his wife's land, but evidences his written assent to her conveyance, upon reason and authority, subscribing his name under seal to her deed, and acknowledging his execution thereof as required by law, is a sufficient written assent to make her deed valid. *Joiner v. Firemen's Ins. Co.*, 6 F. Supp. 103, 104.

Estates by entirety are not changed or affected by this section of the Constitution as to rights of married women. *Moore v. Shore*, 208 N. C. 446, 447, 181 S. E. 275, citing *Bank of Greenville v. Gornto*, 161 N. C. 341, 77 S. E. 222.

The husband has the right, during coverture, to deal with the possession of land held by him and his wife by entireties without the consent of the wife, but neither may make a contract affecting title so as to defeat the right of the survivor in the whole estate without the consent of the other. *Moore v. Shore*, 208 N. C. 446, 181 S. E. 275.

Where lots are conveyed with restrictive covenants limiting buildings to residences and one of such lots is owned by a husband and wife by the entireties, the husband may not convey or contract in respect to the negative easement of such lot over the other lots without the consent of his wife, since the wife has the right to such negative easement as a part of the estate if she should survive her husband. *Id.*

§ 8. How deed for homestead may be made.

Cited in *Pence v. Price*, 211 N. C. 707, 716, 192 S. E. 99.

ARTICLE XI

Punishments, Penal Institutions, and Public Charities

§ 7. Provision for the poor and orphans.

Care of Indigent Sick Is Proper Function of State Government.—In accordance with express constitutional declaration of this section, the care of the indigent sick and afflicted poor is a proper function of the state government, and the General Assembly may by statute require the counties, as administrative agencies of the state, to perform this function, at least within their territorial limits. *Martin v. Board of Com'rs*, 208 N. C. 354, 180 S. E. 777.

APPENDIX VII

Rules of Court

PART I

Rules of Practice in the Supreme Court of North Carolina

5. Appeals—When Heard

Rules Mandatory.—

Where the record from the general county court is not docketed in the Superior Court within the time prescribed, the appeal is properly dismissed, it being provided by § 1608(cc) that appeals from the general county court shall be governed by the rules governing appeals from the Superior Courts to the Supreme Court, and dismissal in such circumstances is mandatory under this rule. *Grogg v. Graybeal*, 209 N. C. 575, 184 S. E. 85.

19. Transcripts

Pleadings, Issues and Judgment a Part of Record.—

In accord with original. See *Goodman v. Goodman*, 208 N. C. 416, 181 S. E. 328.

Appeal Properly Dismissed Where "Judgment of Superior Court" Is Assigned as Error.—Where, on appeal from judgment of the general county court to the Superior Court on matters of law, the Superior Court overrules each of the exceptions relied upon by appellant, upon further appeal to the Supreme Court the appellant should bring forward each ruling of the Superior Court on the exceptions deemed erroneous, and properly group them and assign same as error, and where appellant merely assigns as error "the judgment of the Superior Court," the appeal will be dismissed or the judgment affirmed. *Harrell v. White*, 208 N. C. 409, 181 S. E. 268.

Exceptions to Rulings Granting New Trial Should Be Specifically Stated in Case of Appeal to Supreme Court.—

When an appeal is taken from the general county court to the Superior Court for errors assigned in matters of law, as authorized by § 1608(cc), and a new trial is granted by the Superior Court, it is essential that the rulings upon exceptions granting the new trial be specifically stated, so that in case of appeal to the Supreme Court they may be separately assigned as error in accordance with this rule, and properly considered on appeal. *Jenkins v. Castelleo*, 208 N. C. 406, 407, 181 S. E. 266.

Effect of Failure to Comply.—Although case on appeal was not prepared in accordance with subsection (4) of this rule the appeal was allowed as a dismissal would have been a denial of justice. *Messick v. Hickory*, 211 N. C. 531, 191 S. E. 43.

Applied, as to subsection (3), in *Hancock v. Wilson*, 211 N. C. 129, 134, 189 S. E. 631.

21. Exceptions

I. EXCEPTIONS.

Defendant desiring evidence to be restricted to particular purpose should make request to that effect. *State v. Hendricks*, 207 N. C. 873, 178 S. E. 557.

27. Briefs

When No Brief Filed.—

Where defendant, convicted of a capital felony, fails to file a brief in the Supreme Court, the appeal will be dismissed on motion of the Attorney-General after an examination of the record discloses no error. *State v. Kinyon*, 210 N. C. 294, 186 S. E. 368.

28. Appellant's Brief

Exceptions Not Discussed Deemed Abandoned.—

In accord with first paragraph in original. See *State v. Wells*, 209 N. C. 358, 183 S. E. 282; *Stephenson v. Honeycutt*, 209 N. C. 701, 184 S. E. 482; *Sparks v. Holland*, 209 N. C. 705, 184 S. E. 552; *Hicks v. Nivens*, 210 N. C. 44, 185 S. E. 469; *Taylor v. Rierison*, 210 N. C. 185, 185 S. E. 627; *Texas Co. v. Elizabeth City*, 210 N. C. 454, 187 S. E. 551.

In accord with third paragraph in original. See *State v. Tate*, 210 N. C. 613, 188 S. E. 91.

Effect of Failure to Set Forth Exceptions and Assignments of Error.—The exceptions and assignments of error were not set forth in defendant appellant's brief. This is tantamount to the admission that the evidence was sufficient to be submitted to the jury. *State v. Walls*, 211 N. C. 487, 492, 191 S. E. 232.

Cited in *State v. Hendricks*, 207 N. C. 873, 178 S. E. 557; *State v. Kinyon*, 210 N. C. 294, 186 S. E. 368.

37. Abatement and Revivor

Where a party dies pending appeal, his personal representative will be made a party by order of the Court. First, etc., *Nat. Bank v. Toxey*, 210 N. C. 470, 187 S. E. 553.

Codification of Laws

EXTRAORDINARY SESSION OF 1936

SES-

Ch.	Sec.	Code
1	1-19	8052(1)- 8052(19)
2	1	7534(6)
2	2	7534(8)

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1		3857(a)
3		5030
4		2532
5	1, 2	3319(b)
7		3303
11		5182
12		5175(d)
13		65(a)
14		4018(b)
15	1, 2	7976(b)
16	1	1403
16	2	1407
17		7085(4)
18		5182(a)
19		2315
21		2334(b)
22	1-6	4930(1)- 4930(6)
22	7-16	4930(8)- 4930(17)
22	18, 19	4930(18), 4930(19)
24	1-3	4930(5)
24	4	4930(7)
25		4958(7)
26		690
27		1443
29		1443
30	1-8	5382(1)- 5382(8)
32	1, 2	3202(1)
34		2621(71)
35		215(10)b
39		6294(1)
40		1443
41		1297
42		3846(bb)
43		1260
46		4458
48		1443
49	1-27	3411(65)- 3411(91)
49	27	3411(38)- 3411(64) Repealed
51	2	215(9)
51	3	215(11)
51	4	215(19)
52		1443
53		1663(1)
54		1608(f)
55		65(a)
56		1608(u)
57		2744(a)
58		1608(n)
59		6670(b)

Ch.	Sec.	Code
62	1-4	2621(331)- 2621(334)
63		1681
64		1443
69		4103
70		74
71		3243
72	1-8	1435(d)- 1435(k)
75		1681
80		2492(55)
82		7472(q) 4
84		1608(cc)
86	1-11	5168(eee)- 5168(ooo)
87	1-13	5168(ppp)- 5168(bbbb)
88	1	7748(s)
89		649
90		6558(a)
91		3366(j6)
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94		6658
95, 96		4458
98		3225
100	1, 2	1659(a)
102		1443
104-107		1443
108	1	1706
108	2	1112(b)
111		2613(ii5)
112	1, 2	4511(h)
115	1-4	7472(yy1)
116		7362(c)
117		5470(b)
118		1681
121		65(a)
124	1-14	5126(12)- 5126(25)
124	15½	5126(26)
124	16	5126(5)
125	1	7312(7)
125	2	7312(11)
125	3, 4	7312(15), 7312(16)
126		5694(s1)
127	1-12	7880(1)- 7880(12)
127	13-19	7880(14)- 7880(20)
127	20, 21	7880(22), 7880(23)
127	21½	7880(21)
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127	29	7880(13)
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127	102-110	7880(31)- 7880(39)
127	111-121	7880(41)- 7880(51)
127	122-142	7880(53)- 7880(73)
127	143-163	7880(75)- 7880(94)

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127	166	7880(97)
127	181-191	7880(98)- 7880(108)
127	201-208	7880(109)- 7880(116)
127	210	7880(118-119)
127	211	7880(119)b
127	212	7880(123)a
127	213-215	7880(121)- 7880(123)
127	216	7880(123)c
127	217	7880(123)b
127	300-302	7880(124)- 7880(126)
127	310-324	7880(127)- 7880(142)
127	326-329	7880(144)- 7880(147)
127	331-336	7880(149)- 7880(154)
127	340, 341	7880(155), 7880(156)
127	400-402	7880(156)a- 7880(156)c
127	404	7880(156)e
127	405	7880(156)g
127	406	7880(156)f
127	407	7880(156)h
127	407	7880(156)p
127	408	7880(156)i
127	411, 412	7880(156)l, 7880(156)m
127	414	7880(156)o
127	415-418	7880(156)p 7880(156)s
127	420-426	7880(156)u- 7880(156)aa
127	427	7880(156)dd
127	500-525	3411(92)- 3411(118)
127	527	3411(dd)- 3411(mm) Repealed
127	527, 528	3411(119), 3411(120)
127	600-609	7880(156)ee- 7880(156)nn
127	700-716	7880(156)oo- 7880(156)eee
127	800-839	7880(157)- 7880(195)
128	1, 2	8012(d)
130		6398
131		4688(a) Repealed
132	1-13	4665(1)- 4665(13)
133	1-3	1137(a)
135	1-3	5018(63)- 5018(65)
137		3907
138	1	5003(w) Repealed
138	2, 3	5003(w1), 5003(w2)
138	4	5003(n)

Ch.	Sec.	Code	Ch.	Sec.	Code	Ch.	Sec.	Code
138	5	5003(r)	217	1-6	1808(1)-	277		7343(k)
138	6	5003(u)			1808(6)	280		3542(d)
138	7	5003(x)	220		225(g)	281		7251(t)
139		5805(e)	221		2304(ff2)	282		1681
143		1244	222		7661	283	1, 2	1443
145	1, 2	7362(p),	223		1197	284		3366(j5)
		7362(q)	224	1, 2	6869, 6870	285		5126(1a)
146		5912(a)	225		4109	286		4458
147	1	7329	226		4516	288	1-28	5018(1)-
147	2	7334	227		5168(k1)			5018(28)
148, 149		3904(j)	229	1-3	7880(156)pp1	288	30-58	5018(29)-
150		8052(6)	230		7194(a)			5018(57)
150		8052(15)	231	1, 2	6355(1),	288	60	5018(58)
150		8052(17)			6355(2)	288	61	5067(a)-
151		2329	232		4780(3)			5067(h) Repealed
152	1, 2	2141(28),	233	1, 2	7880(156)cc	288	62-63½-A	5018(59)
		2141(29)	234	1-4	622(a)			5018(62)
153		4870(rr)	235		5912(1)	290		3904(j)
154		220(a)	236		3207(a)	291	1, 2	7971(104),
155	1, 2	199(a),	237		3411(68)			7971(105)
		199(b)	239	1-14	6476(aa)-	291	200-204	7971(106)-
156		1443			6476(oo)			7971(110)
157		4428	242	1, 2	5912(m),	291	300-304	7971(111)-
159		1443			5912(n)			7971(115)
160		6122(j)1	243		2304(p)	291	400-410	7971(116)-
162, 163		1443	244	1-4	7251(w)6-			7971(126)
165		1112(o)			7251(w)9	291	500, 501	7971(127),
167		1443	247	1-3	2613(j)-			7971(128)
169	1-10	5754(7)-			2613(l)	291	600-603	7971(129)-
		5754(16)	247	4	2613(q)			7971(132)
171		1218	247	5	2613(v)	291	700, 701	7971(133),
172		2717(b)	247	6	2613(aa)			7971(134)
173		1428	248		4369	291	800-803	7971(135)-
174		4667	249	1	7880(30)			7971(138)
175	1-12	4895(26)-	249	2	7880(60)a	291	900-908	7971(139)-
		4895(37)	249	3	7880(140)			7971(147)
178		6508	249	4	7880(156)dd	291	1000-1006	7971(148)-
179		1144	249	5	7880(53)			7971(154)
181		5168(j1)	249	5	7880(86)	291	1100-1109	7971(155)-
183		3175(a)	249	6	3411(93)			7971(164)
184		5780(m1)-	249	7-9	3411(96)-	291	1200-1202	7971(165)-
		5780(m5)			3411(98)			7971(167)
184		5780(m8)	249	10	3411(101)a	291	1300-1303	7971(168)-
184		5780(m10)	249	11	3411(102)			7971(171)
186		220(b)	249	12	3411(104)	291	1400-1403	7971(172)-
188		962(b)	249	13, 14	3411(108),			7971(175)
189	1, 2	4409(1),			3411(109)	291	1500-1504	7971(176)-
		4409(2)	249	15	3411(110)a			7971(180)
190	1-15	4035(1)-	249	16, 17	3411(111),	291	1600-1621	7971(181)-
		4035(15)			3411(112)			7971(202)
192		1443	249	18	7880(156)ccc	291	1700-1703	7971(203)-
194		3924(aa)	254	18½	3411(112)			7971(206)
196	1-6	4437(r)-	256	1-10	1224(j)-	291	1703	7971(1)-
		4437(w)			1224(s)			7971(51) Repealed
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